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Presidential Documents

Title 3—

The President

Executive Order 13566 of February 25, 2011

Blocking Property and Prohibiting Certain Transactions Related to Libya

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, find that Colonel Muammar Qadhafi, his government, and close associates have taken extreme measures against the people of Libya, including by using weapons of war, mercenaries, and wanton violence against unarmed civilians. I further find that there is a serious risk that Libyan state assets will be misappropriated by Qadhafi, members of his government, members of his family, or his close associates if those assets are not protected. The foregoing circumstances, the prolonged attacks, and the increased numbers of Libyans seeking refuge in other countries from the attacks, have caused a deterioration in the security of Libya and pose a serious risk to its stability, thereby constituting an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) the persons listed in the Annex to this order; and

(b) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to be a senior official of the Government of Libya;

(ii) to be a child of Colonel Muammar Qadhafi;

(iii) to be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses related to political repression in Libya;

(iv) to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of the activities described in subsection (b)(iii) of this section or any person whose property and interests in property are blocked pursuant to this order;

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, any person whose property and interests in property are blocked pursuant to this order; or

(vi) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to this order.

Sec. 2. All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including

any overseas branch, of the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Sec. 3. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 4. I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the type of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to sections 1 and 2 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by sections 1 and 2 of this order.

Sec. 5. The prohibitions in sections 1 and 2 of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 6. The prohibitions in sections 1 and 2 of this order apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 7. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 8. Nothing in this order shall prohibit transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof.

Sec. 9. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term "United States person" means any United States citizen or national, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 10. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 11. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 12. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 13. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 14. This order is effective at 8:00 p.m. eastern standard time on February 25, 2011.

THE WHITE HOUSE,

February 25, 2011.

Billing code 3195–W9–P

ANNEX

Individuals

1. Ayesha QADHAFI [Lieutenant General in the Libyan Army, born circa 1976 or 1977]

2. Khamis QADHAFI [born 1980]

3. Muammar QADHAFI [Head of State of Libya, born 1942]

4. Mutassim QADHAFI [National Security Advisor and Lieutenant Colonel in the Libyan Army, born circa 1975]

5. Saif Al-Islam QADHAFI [born June 5, 1972]

[FR Doc. 2011–4753
Filed 3–1–11; 8:45 am]
Billing code 4811–33–C

Rules and Regulations

Federal Register
Vol. 76, No. 41
Wednesday, March 2, 2011

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

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

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1392]

RIN No. AD 7100–AD54

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: The Board is publishing a final rule to amend Regulation Z, which implements the Truth in Lending Act (TILA). The final rule implements Section 1461 of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1461 amends TILA to provide a separate, higher rate threshold for determining when the Board's escrow requirement applies to higher-priced mortgage loans that exceed the maximum principal obligation eligible for purchase by Freddie Mac.

DATES: The final rule is effective on April 1, 2011, for covered loans for which an application is received by a creditor on or after that date.

FOR FURTHER INFORMATION CONTACT: Jamie Z. Goodson, Attorney, or Paul Mondor, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. TILA and Regulation Z

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the purposes of TILA is to provide meaningful disclosure of credit terms, to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.

TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, and administrative sanction.

In 1994, Congress amended TILA by enacting the Home Ownership and Equity Protection Act (HOEPA). The HOEPA amendments created special substantive protections for consumers obtaining mortgage loans with annual percentage rates (APRs) or total points and fees exceeding prescribed thresholds. In addition, TILA Section 129(*l*)(2)(A), as added by HOEPA, authorizes the Board to prohibit acts and practices the Board finds to be unfair and deceptive in connection with mortgage loans. 15 U.S.C. 1639(*l*)(2)(A).

B. The 2008 HOEPA Final Rule

In July of 2008, the Board adopted final rules pursuant to the Board's authority in Section 129(*l*)(2)(A). 73 FR 44522, July 30, 2008 (2008 HOEPA Final Rule). The 2008 HOEPA Final Rule defined a class of "higher-priced mortgage loans" and prohibited certain lending and servicing practices in connection with such transactions. Among other things, the Board prohibited extending a higher-priced mortgage loan secured by a first lien unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor. *See* § 226.35(b)(3).

Under the 2008 HOEPA Final Rule, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the average prime offer rate for a comparable transaction, as of the date the transaction's interest rate is set, by 1.5 or more percentage points for loans secured by a first lien, or by 3.5 or more percentage points for loans secured by a subordinate lien. *See* § 226.35(a)(1).

C. The Dodd-Frank Act

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) was signed into law.[1] Section 1461 of the Dodd-Frank Act creates TILA Section 129D.[2] TILA Section 129D substantially codifies the requirement in Regulation Z that escrow accounts for taxes and insurance be established for first-lien higher-priced mortgage loans, adopted by the Board as part of the 2008 HOEPA Final Rule. As discussed above, the 2008 HOEPA Final Rule imposed the escrow requirement on first-lien mortgage transactions having an APR that exceeds the average prime offer rate for a comparable transaction by 1.5 or more percentage points. The Dodd-Frank Act incorporates this coverage test in new TILA Section 129D for loans that do not exceed the maximum original principal obligation for a mortgage to be eligible for purchase by Freddie Mac. TILA Section 129D(b)(3)(A) (to be codified at 15 U.S.C. 1639d(b)(3)(A)).

For loans with an original principal obligation that exceeds the applicable Freddie Mac maximum principal obligation, TILA Section 129D requires escrow accounts only if the APR exceeds the applicable average prime offer rate by 2.5 or more percentage points. TILA Section 129D(b)(3)(B) (to be codified at 15 U.S.C. 1639d(b)(3)(B)). The current maximum principal obligation for a mortgage loan to be eligible for purchase in 2011 by Freddie Mac is $417,000 for a single-family property that is not located in a designated "high-cost" area.[3] (Higher limits apply for mortgage loans secured by a property with two to four residential units.) Thus, if the original principal obligation for a mortgage loan secured by a single-family property in such an area is $415,000, the determination of whether the loan is

[1] Public Law 111–203, 124 Stat. 1376.

[2] Public Law 111–203, § 1461, 124 Stat. 1376, 2178 (to be codified at 15 U.S.C. 1639D).

[3] *See* Freddie Mac, Bulletin No. 2010–28, 2011 Loan Limits, *available at http://www.freddiemac.com/sell/guide/bulletins/pdf/bll1028.pdf.*

subject to the escrow requirement in § 226.35(b)(3) would be made using an APR threshold of 1.5 percentage points over the applicable average prime offer rate; by contrast, if the original principal obligation is $420,000, the determination would be made using a threshold of 2.5 percentage points over the applicable average prime offer rate. Loans that are not eligible for purchase by Freddie Mac because their original principal obligation is too large are widely referred to in the mortgage market as "jumbo" mortgages. The term "jumbo" also is used in this final rule to refer to such loans.

II. The Board's September 2010 Escrow Proposal

A. Summary of the September 2010 Escrow Proposal

On September 24, 2010, the Board published a proposed rule in the **Federal Register** to implement TILA Section 129D(b)(3)(B), as enacted by Section 1461 of the Dodd-Frank Act. *See* 75 FR 58505 (September 2010 Escrow Proposal). Accordingly, the Board proposed to raise the rate threshold for coverage by the escrow account requirement for first-lien, higher-priced "jumbo" mortgage loans. Specifically, the Board proposed to require escrows for "jumbo" loans whose APR exceeds the average prime offer rate for a comparable transaction, as of the date the transaction's interest rate is set, by 2.5 or more percentage points. The Board did not propose to implement other provisions of the Dodd-Frank Act related to escrow accounts under the September 2010 Escrow Proposal. The Board is proposing rules to implement other escrow-related provisions of the Dodd-Frank Act in a separate notice published elsewhere in today's **Federal Register.**

B. Overview of Comments Received

The comment period on the September 2010 Escrow Proposal closed on October 25, 2010. The Board received 15 comment letters in response to the proposed rule, from creditors, loan originators, banking trade associations, and state banking regulators. No comments were received from consumers or consumer advocates. Commenters generally supported the proposed increase in the coverage threshold for the escrow requirement, for "jumbo" loans.

Several commenters, however, requested that the Board clarify that only the dollar amount specified in the sixth sentence of Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (FHLMCA), 12 U.S.C. 1454(a)(2), should be used in determining whether or not a loan is a "jumbo" loan. (Currently, the amount specified in that sentence as the maximum principal obligation for a loan secured by a single-family residence is $417,000.) In particular, these commenters stated that the higher maximum principal obligation set for "high-cost" areas under Section 305(a)(2) should not be considered in determining whether a loan is a "jumbo" loan. For example, if the maximum principal obligation eligible for purchase by Freddie Mac in a particular "high-cost" area were $500,000 for a single-family residence, these commenters believe that a loan with a principal obligation between $417,000 and $500,000 secured by a single-family residence in that area should be classified as a "jumbo" loan subject to the higher rate threshold for classification as a higher-priced mortgage loan, even though Freddie Mac may purchase that loan.

Other commenters recommended exemptions from the escrow requirement for higher-priced mortgage loans. Recommended exemptions included for: (1) Loans a creditor holds in portfolio; (2) loans made by community banks; (3) loans made in rural areas; and (4) small retail loans that are first-lien loans because a consumer has paid off his larger mortgage. Such exceptions are outside the scope of this rulemaking. The Board is publishing elsewhere in today's **Federal Register** a proposed rule that addresses several of those proposed exceptions.

III. Summary of the Final Rule

This final rule revises § 226.35(b)(3), as proposed, to provide a higher APR threshold for determining whether "jumbo" mortgage loans secured by a first lien on a consumer's principal dwelling are higher-priced mortgage loans for which an escrow account must be established. As revised, the threshold for coverage of the escrow requirement for "jumbo" loans is 2.5 percentage points (rather than 1.5 percentage points) in excess of the average prime offer rate for a comparable transaction, as of the date the transaction's rate is set. Raising the APR threshold applicable to "jumbo" loans eliminates the mandatory escrow requirement for loans with an APR above the existing threshold but below the new threshold. Creditors may, at their option, elect to continue to use the 1.5 percentage point threshold for "jumbo" loans. Section 226.35 and this final rule do not apply to open-end credit plans subject to § 226.5b or to loans to finance the initial construction of a dwelling, temporary or "bridge" loans with a term of 12 months or less, or reverse mortgages. *See* § 226.35(a)(3). This final rule is effective on April 1, 2011 for covered loans for which an application is received on or after that date, as discussed in detail below in Part VI of this **SUPPLEMENTARY INFORMATION.**

IV. Legal Authority

The Board amends § 226.35(b)(3) pursuant to its authority under TILA Section 105(a) to prescribe regulations to carry out the purposes of TILA and to provide for such requirements, adjustments, and exceptions as necessary or proper to effectuate the purposes of, to prevent circumvention of, and facilitate compliance with TILA, as discussed in detail below. *See* 15 U.S.C. 1604(a) (as revised).

V. Section-by-Section Analysis

Section 226.1 Authority, Purpose, Coverage, Organization, Enforcement and Liability

1(d) Organization

Section 226.1(d) describes how Regulation Z is organized. Section 226.1(d)(5) describes Subpart E of Regulation Z, which this interim final rule amends by revising § 226.35(a)(1) and (b)(3)(v). Comment 1(d)(5)–1 is revised to add a new subpart 1(d)(5)–1.iii, stating that this final rule is effective on April 1, 2011, for covered transactions for which an application is received on or after April 1, 2011.

Section 226.35 Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans

35(a) Higher-Priced Mortgage Loans

35(a)(1)

As discussed below, the Board revises § 226.35(b)(3) to provide a higher threshold for determining whether escrow accounts must be established for certain closed-end mortgage loans secured by a first lien on the consumer's principal dwelling, pursuant to the Dodd-Frank Act. As revised, the threshold for coverage of the escrow requirement for "jumbo" loans is 2.5 percentage points (rather than the 1.5 percentage points generally applicable under § 226.35(a)(1)) in excess of the average prime offer rate for a comparable transaction, as of the date the transaction's rate is set. The Board is making a conforming amendment to § 226.35(a)(1) to reflect this exception to the general coverage test for higher-priced mortgage loans.

35(b) Rules for Higher-Priced Mortgage Loans

35(b)(3) Escrows

35(b)(3)(v) "Jumbo" Loans

The Board adds a new § 226.35(b)(3)(v) to implement TILA Section 129D(b)(3)(B), as enacted by Section 1461 of the Dodd-Frank Act. Section 226.35(b)(3)(v) provides a higher threshold for determining whether escrow accounts must be established for certain closed-end mortgage loans secured by a first lien on a consumer's principal dwelling. Currently, under § 226.35(a)(1), such a loan is considered a higher-priced mortgage loan and is subject to the escrow requirement if its APR exceeds the average prime offer rate for a comparable transaction, as of the date the transaction's rate is set, by 1.5 or more percentage points. Pursuant to TILA Section 129D(b)(3)(B), for a closed-end, first-lien mortgage loan whose original principal obligation exceeds the current maximum principal obligation for loans eligible for purchase by Freddie Mac, the applicable rate threshold is 2.5 percentage points or more above the average prime offer rate for a comparable transaction, as of the date the transaction's rate is set.

Comment 35(b)(3)(v)–1 clarifies that adjustments to the maximum principal obligation that are made by the Federal Housing Finance Agency (FHFA) pursuant to FHLMCA Section 305(a)(2) or by other federal law will apply in determining whether a mortgage loan is a "jumbo" loan subject to the higher APR threshold under § 226.35(b)(3)(v). Comment 35(b)(3)(v)–2 clarifies that the higher APR threshold applies solely in determining if a "jumbo" loan is subject to the escrow requirement. The determination of whether "jumbo" first-lien loans are subject to the other protections in § 226.35, such as the ability to repay requirements under § 226.35(b)(1) and the restrictions on prepayment penalties under § 226.35(b)(2), would continue to be based on the 1.5 percentage point threshold.

Adjustments pursuant to FHLMCA Section 305(a)(2). TILA Section 129D(b)(3)(B) provides that a separate, higher APR threshold applies to a first-lien mortgage loan that exceeds the applicable maximum principal obligation eligible for purchase by Freddie Mac, established pursuant to the sixth sentence of FHLMCA Section 305(a)(2) (the "general maximum principal obligation"). However, the sixth sentence of FHLMCA Section 305(a)(2), as revised by the Housing and Economic Recovery Act of 2008 (HERA), also provides that its principal obligation limitations are subject to other limitations in that paragraph.[4] *See* 12 U.S.C. 1454(a)(2). Other limitations in that paragraph include annual adjustments based on changes in the housing price index maintained by FHFA and adjustments to increase the maximum principal obligation for loans secured by property in "high-cost" areas. *See* 12 U.S.C. 1454(a)(2). The plain language of the sixth sentence of FHLMCA Section 305(a)(2) incorporates by reference limitations set by other sentences in Section 305(a)(2). The Board believes, therefore, that adjustments made pursuant to Section 305(a)(2) should apply in determining whether a loan is a "jumbo" loan subject to the higher APR threshold for classification as a higher-priced mortgage loan.

The Board believes this is also consistent with statutory intent, because taking into account adjustments to the maximum principal obligation will ensure similar treatment of all loans eligible for purchase by Freddie Mac. The higher threshold for "jumbo" loans reflects the higher price typically associated with loans that are not eligible for purchase by Freddie Mac (or by Fannie Mae, which is subject to the same limit on the maximum principal obligation). Using the higher APR threshold for loans that are eligible for purchase by Freddie Mac after adjustments to the maximum principal obligation pursuant to FHLMCA Section 305(a)(2) would not be consistent with the statutory intent.

Adjustments pursuant to other federal law. Legislation enacted by Congress in 2009 and 2010 provides for further adjustments to the maximum principal obligation eligible for purchase by Freddie Mac. In light of declines in home values in certain areas, Congress provided in that legislation that the maximum principal obligation eligible for purchase by Freddie Mac shall be the greater of: (1) The maximum principal obligation determined pursuant to FHLMCA Section 305(a)(2); and (2) the maximum principal obligation established for 2008 under Section 201 of the Economic Stimulus Act of 2008.[5] The Board believes such adjustments also should apply in determining if a loan is a "jumbo" loan for purposes of § 226.35(b)(3)(v). The Board believes such adjustments are made pursuant to Section 305(a)(2), because they incorporate FHLMCA Section 305(a)(2) in the formula used to determine the maximum principal obligation eligible for purchase by Freddie Mac.

Nevertheless, even if the adjustments made pursuant to this legislation are not deemed to be made pursuant to Section 305(a)(2), the Board believes it is appropriate to use its authority under TILA Section 105(a) to require consideration of such adjustments. 15 U.S.C. 1604(a). TILA Section 105(a) authorizes the Board to provide for such requirements, adjustments, and exceptions for all or any class of transactions as in the Board's judgment are necessary or proper to effectuate the purposes of, to prevent circumvention or evasion of, or to facilitate compliance with TILA. The Board believes it is necessary and proper, to effectuate the purposes of TILA Section 129D(b)(3)(B), to make adjustments consistent with the provisions of federal law other than FHLMCA Section 305(a)(2) to ensure all loans eligible for purchase by Freddie Mac are treated similarly for purposes of the escrow requirements. Further, considering the additional adjustments made by other federal laws is consistent with the language in TILA Section 129D(b)(3)(B), which states that the determination of whether or not a loan is a "jumbo" loan subject to a higher APR threshold shall be based on the maximum principal obligation "in effect" for Freddie Mac as of the date the transaction's rate is set. The maximum principal obligation in effect is the obligation FHFA establishes pursuant to both FHLMCA Section 305(a)(2) and other federal law.

The Board also believes those adjustments are necessary and proper to facilitate compliance with TILA Section 129D(b)(3)(B). Considering only adjustments made under FHLMCA Section 305(a)(2) would require creditors that sell loans to Freddie Mac to use one dollar limit to ascertain what rate threshold to apply in determining whether a loan is subject to the escrow requirements and a different limit to determine whether they may sell loans to Freddie Mac. The same burden would apply for creditors that sell loans to Fannie Mae, which is subject to the same maximum principal obligation limits. Considering adjustments under both FHLMCA Section 305(a)(2) and other applicable federal law would facilitate compliance by eliminating that burden.

[4] Section 1124 of HERA revises Section 305(a)(2) of the FHLMCA. *See* Public Law 110–289, 122 Stat. 2654, 2692.

[5] *See* Public Law 111–242, § 146, 124 Stat. 2607, 2615 (2010) (providing for adjustments under a continuing resolution); Public Law 111–88, § 167, 122 Stat. 2904, 2973 (2009) (same); *see also* Public Law 110–185, § 201, 122 Stat. 613, 620 (Feb. 13, 2008) (providing for adjustments under the Economic Stimulus Act).

For the reasons discussed above, and pursuant to its authority under TILA Section 105(a), the final rule provides that FHFA's adjustments to the general maximum principal obligation stated in FHLMCA Section 305(a)(2) which are made pursuant to other applicable federal law shall be considered in determining whether a loan is a "jumbo" loan subject to § 226.35(b)(3)(v). *See* comment 35(b)(3)(v)–1.

VI. Effective Date of Final Rule

The Board is changing the escrow requirement's coverage threshold to implement the statutory amendment made by the Dodd-Frank Act, as discussed above. The amendment relieves mortgage creditors of compliance with the escrow requirement for certain "jumbo" loans. When relief is granted from Regulation Z's escrow requirement, the affected loans could become subject to any state or local laws that prohibit mandatory escrow accounts. As a result, some creditors might need time to make the system changes necessary to comply with state or local laws. Accordingly, the Board sought comment on the amount of time necessary for creditors to implement the change in their systems and procedures.

Almost all commenters that discussed the implementation period stated that the Board should allow creditors to immediately use the higher APR threshold for classification of a "jumbo loan" as a higher-priced mortgage loan. One banking trade association stated that creditors easily can adjust their systems to stop escrowing for such loans. Most of the commenters that addressed the effective date stated that compliance with the higher threshold should be optional until final rules are issued to implement other escrow-related requirements under the Dodd-Frank Act. Those commenters stated that creditors would prefer to adjust their training and systems to implement all escrow-related statutory and regulatory requirements at one time. Some of those commenters stated that, at a minimum, compliance should be optional for a period of time; the recommended periods ranged between six months and one year. An industry trade association and a bank stated that the effective date for the final rule should be delayed until other escrow-related requirements are implemented. The industry trade association suggested, in the alternative, at least a six-month delay. The industry trade association also stated that creditors should not have to adjust their systems to comply with state or local laws prohibiting mandatory escrow accounts and again subsequently to comply with Board regulations.

The Dodd-Frank Act does not provide an effective date specifically for rules implementing TILA Section 129D(b)(3)(B). The Riegle Community Development and Regulatory Improvement Act of 1994 requires that agency regulations that impose additional reporting, disclosure, and other requirements on insured depository institutions take effect on the first day of a calendar quarter following publication in final form. 12 U.S.C. 4802(b). Consistent with the Riegle Community Development Act, this final rule is effective on April 1, 2011, for covered loans for which an application is received by a creditor on or after that date. *See* comment 1(d)(5)–1.iii. The Board believes that this time period will afford creditors sufficient time to adjust their systems to eliminate escrow accounts for covered loans to comply with any applicable state or local laws that prohibit requiring an escrow account or imposing other escrow requirements.

Under this final rule, creditors can choose to continue to escrow for "jumbo" loans with an APR below the new threshold (subject to applicable state or local laws). This final rule does not require termination of any existing escrow account.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The rule contains no collections of information under the PRA. *See* 44 U.S. C. 3502(3). Accordingly, there is no paperwork burden associated with the rule.

VIII. Final Regulatory Flexibility Analysis

In accordance with Section 4 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604, the Board is publishing a final regulatory flexibility analysis for the amendments to Regulation Z. The RFA generally requires an agency to assess the impact a rule is expected to have on small entities. The RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities. Under standards the Small Business Administration (SBA) sets, the threshold for an entity to be considered "small" is $175 million or less in assets for banks and other depository institutions and $7 million or less in revenues for non-bank mortgage lenders.[6]

A. Statement of the Need for, and Objectives of, the Final Rule

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. Congress enacted HOEPA in 1994 as an amendment to TILA. TILA is implemented by the Board's Regulation Z. HOEPA imposed additional substantive protections on certain high-cost mortgage transactions. HOEPA also charged the Board with prohibiting acts or practices in connection with mortgage loans that are unfair, deceptive, or designed to evade the purposes of HOEPA, and acts or practices in connection with refinancing of mortgage loans that are associated with abusive lending or are otherwise not in the interest of borrowers. The Board adopted the requirement to establish an escrow account for higher-priced mortgage loans under 2008 HOEPA Final Rule pursuant to this mandate.

The Dodd-Frank Act amended TILA to increase the threshold for coverage of the escrow requirement, for certain loans ineligible for purchase by Freddie Mac because their original principal obligation is too high ("jumbo" loans), as discussed above in the **SUPPLEMENTARY INFORMATION**. This final rule implements that change by amending Regulation Z. These amendments are made in furtherance of the Board's responsibility to prescribe regulations to carry out the purposes of TILA. The legal basis for the final rule is in Section 105(a) of TILA. 15 U.S.C. 1604(a).

B. Summary of Significant Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

In accordance with Section 3(a) of the RFA, 5 U.S.C. 603(a), the Board prepared an initial regulatory flexibility analysis (IRFA) in connection with the proposed rule. The IRFA stated that the Board believed the proposed rule would not have a significant economic effect on a substantial number of small entities. The Board requested comment on the IRFA and on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small businesses.

[6] 13 CFR 121.201.

No commenter specifically addressed the Board's IRFA, but several commenters stated that compliance with recent statutory and regulatory changes to requirements for mortgage lending, including amendments to TILA and Regulation Z, is burdensome in the aggregate. Most commenters that discussed the effective date stated that creditors should be able to use the higher annual percentage rate threshold immediately, to provide relief in connection with "jumbo" loans that would be subject to the higher threshold for the escrow requirement. Those commenters generally recommended, however, that compliance with the final rule be optional until the Board implements other escrow-related requirements under the Dodd-Frank Act. An industry trade association and a bank opposed an immediate effective date for the final rule. Both commenters that recommended allowing creditors to use the higher threshold immediately and commenters that recommended delaying the effective date of the rule suggested that, at a minimum, the Board make compliance optional for a period of time. Recommended periods ranged from 6 months to one year.

As discussed above in Part VI of the **SUPPLEMENTARY INFORMATION**, the Board believes that the effective date of April 1, 2011, provides sufficient time for creditors to adjust their training and systems to apply the higher APR threshold for "jumbo" loans. The rule is effective on that date for loans where the creditor receives an application on or after April 1, 2011. Escrow accounts typically are established when the loan is consummated some time after the application is processed and approved. Further, creditors can choose to continue to escrow for "jumbo" loans with an APR below the new threshold, subject to applicable state or local laws prohibiting mandatory escrow or imposing other escrow requirements. If a creditor elects not to apply the higher APR threshold to such loans, it is likely that few or no training or systems changes will be necessary.

C. Description and Estimate of Small Entities to Which the Final Rule Applies

The final rule applies to all institutions and entities that engage in closed-end lending secured by a consumer's principal dwelling. TILA and Regulation Z have broad applicability to individuals and businesses that originate even small numbers of home-secured loans. *See* § 226.1(c)(1). Using data from Reports of Condition and Income (Call Reports) of depository institutions and certain subsidiaries of banks and bank holding companies and data reported under the Home Mortgage Disclosure Act (HMDA), the Board can estimate the approximate number of small entities that would be subject to the rules. For the majority of HMDA respondents that are not depository institutions, however, exact revenue information is not available.

Based on the best information available, the Board makes the following estimate of small entities that are affected by this final rule: According to September 2010 Call Report data, approximately 8,669 small depository institutions would be subject to the rule. Approximately 15,627 depository institutions in the United States filed Call Report data, approximately 10,993 of which had total domestic assets of $175 million or less and thus were considered small entities for purposes of the RFA. Of the 3,788 banks, 507 thrifts, 6,632 credit unions, and 66 branches of foreign banks that filed Call Report data and were considered small entities, 3,667 banks, 479 thrifts, 4,520 credit unions, and 3 branches of foreign banks, totaling 8,669 institutions, extended mortgage credit. For purposes of this Call Report analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks. Further, 1,303 non-depository institutions (independent mortgage companies, subsidiaries of a depository institution, or affiliates of a bank holding company) filed HMDA reports in 2010 for 2009 lending activities. Based on the small volume of lending activity reported by these institutions, most are likely to be small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The changes to compliance requirements that the final rule makes are described in the **SUPPLEMENTARY INFORMATION**. The effect of the revisions to Regulation Z on small entities is minimal because the revisions bring about burden relief; certain mortgage loans that otherwise would be subject to the escrow account requirement in § 226.35(b)(3) are relieved of that requirement. To take advantage of that relief, some small entities will need to modify their home-secured credit origination processes once to implement the revised coverage test. The precise costs to small entities of updating their systems are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to originate mortgage loans and test them for "higher-priced mortgage loan" coverage.

E. Steps Taken To Minimize the Economic Impact on Small Entities

The final rule implements a specific numerical adjustment to an annual percentage rate (APR) threshold mandated by Section 1461 the Dodd-Frank Act for "jumbo" loans, which limits the Board's flexibility to establish alternative APR thresholds. The higher APR threshold may be used in connection with a "jumbo" loan, that is, a loan with an original principal obligation that exceeds the maximum principal obligation for loans eligible for purchase by Freddie Mac. As discussed above in Part V of the **SUPPLEMENTARY INFORMATION**, the Board believes that, under the Dodd-Frank Act, loans are "jumbo" loans for purposes of TILA Section 129D if they are "jumbo" loans ineligible for purchase by Freddie Mac because their original principal obligation is too high. Some commenters recommended that the Board construe Section 1461 of the Dodd-Frank Act narrowly to consider only the general maximum principal obligation for loans eligible for purchase by Freddie Mac, despite the fact that the maximum principal obligation is higher in certain high-cost areas.

The Board is not adopting that suggested alternative. As discussed in greater detail in Part V of the **SUPPLEMENTARY INFORMATION**, the Board believes that the Dodd-Frank Act requires consideration of adjustments to the general maximum principal obligation made by the Federal Housing Finance Agency (FHFA) pursuant to Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (FHLMCA). Further, the Board believes that it is necessary to consider additional adjustments FHFA makes pursuant to other applicable federal law to effectuate the purposes of and facilitate compliance with TILA, as discussed above.

List of Subjects in 12 CFR Part 226

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

Authority and Issuance

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

PART 226—TRUTH IN LENDING (REGULATION Z)

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

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(*l*); Pub. L. 111–24 § 2,

123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Section 226.35 is amended by revising paragraph (a)(1) and adding paragraph (b)(3)(v) to read as follows:

§ 226.35 Prohibited acts or practices in connection with higher-priced mortgage loans.

(a) *Higher-priced mortgage loans*—(1) For purposes of this section, except as provided in paragraph (b)(3)(v) of this section, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

* * * * *

(b) * * *

(3) * * *

(v) "*Jumbo*" *loans.* For purposes of this § 226.35(b)(3), for a transaction with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac, the coverage threshold set forth in paragraph (a)(1) of this section for loans secured by a first lien on a dwelling shall be 2.5 or more percentage points greater than the applicable average prime offer rate.

* * * * *

■ 3. In Supplement I to Part 226:

■ A. Under *Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability,* new paragraph 1(d)(5)–1.iii is added.

■ B. Under *Section 226.35—Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans, 35(b) Rules for higher-priced mortgage loans, 35(b)(3) Escrows,* new heading *35(b)(3)(v)* "*Jumbo*" *loans* and new paragraphs 1 and 2 are added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

Paragraph 1(d)(5).

1. *Effective dates.*

i. * * *

ii. * * *

iii. The final rule revising escrow requirements under § 226.35(b)(3) published on March 2, 2011 applies to certain closed-end extensions of consumer credit secured by the consumer's principal dwelling. *See* § 226.35(a). Covered transactions for which an application is received by a creditor on or after April 1, 2011 are subject to § 226.35(b)(3), as revised.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.35—Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans

* * * * *

35(b) Rules for higher-priced mortgage loans.

* * * * *

35*(b)(3) Escrows.*

* * * * *

35(b)(3)(v) "*Jumbo*" *loans.*

1. *Special threshold for* "*jumbo*" *loans.* For purposes of the escrow requirement in § 226.35(b)(3) only, the coverage threshold stated in § 226.35(a)(1) for first-lien loans (1.5 or more percentage points greater than the average prime offer rate) does not apply to a loan with a principal obligation that exceeds the limit in effect as of the date the loan's rate is set for the maximum principal obligation eligible for purchase by Freddie Mac ("jumbo" loans). The Federal Housing Finance Agency (FHFA) establishes and adjusts the maximum principal obligation pursuant to 12 U.S.C. 1454(a)(2) and other provisions of federal law. Adjustments to the maximum principal obligation made by FHFA apply in determining whether a mortgage loan is a "jumbo" loan to which the separate coverage threshold in § 226.35(b)(3)(v) applies.

2. *Escrow requirements only.* Under § 226.35(b)(3)(v), for "jumbo" loans, the annual percentage rate threshold is 2.5 or more percentage points greater than the average prime offer rate. This threshold applies solely in determining whether a "jumbo" loan is subject to the escrow requirement of § 226.35(b)(3). The determination of whether "jumbo" first-lien loans are subject to the other protections in § 226.35, such as the ability to repay requirements under § 226.35(b)(1) and the restrictions on prepayment penalties under § 226.35(b)(2), is based on the 1.5 percentage point threshold stated in § 226.35(a)(1).

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 23, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–4384 Filed 3–1–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0149; Directorate Identifier 2011–CE–001–AD; Amendment 39–16616; AD 2011–05–07]

RIN 2120–AA64

Airworthiness Directives; Allied Ag Cat Productions, Inc. Models G–164, G–164A, G–164B, G–164B With 73″ Wing Gap, G–164B–15T, G–164B–34T, G–164B–20T, G–164C, G–164D, and G–164D With 73″ Wing Gap Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires repetitively inspecting the interior and the exterior of the main tubular spar of the rudder assembly for corrosion, taking necessary corrective action if corrosion is found, and applying corrosion protection. This AD retains the requirements of the previous AD and changes the compliance time for certain products listed above. This AD was prompted by our determination that the compliance time specified for Models G–164, G–164A, and G–164B airplanes does not adequately address the unsafe condition. We are issuing this AD to detect and correct corrosion in the rudder main tubular spar, which could result in failure of the rudder main spar tube. This failure could lead to loss of directional control.

DATES: This AD is effective March 17, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 19, 2008 (73 FR 67372, November 14, 2008).

We must receive any comments on this AD by April 18, 2011.

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

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

Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Allied Ag Cat Productions, Inc., 301 West Walnut Street, P.O. Box 482, Walnut Ridge, Arkansas 72479; telephone: (870) 886–2418. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, Missouri 64016. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; *phone:* (210) 308–3365; *fax:* (210) 308–3370; *e-mail: andrew.mcanaul@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On October 23, 2008, we issued AD 2008–22–21, Amendment 39–15718 (73 FR 67372, November 14, 2008), for all Allied Ag Cat Productions, Inc. Models G–164, G–164A, G–164B, G–164B with 73″ wing gap, G–164B–15T, G–164B–34T, G–164B–20T, G–164C, G–164D, and G–164D with 73″ wing gap airplanes.

That AD supersedes AD 78–08–09, Amendment 39–3191 (43 FR 16699, April 20, 1978), and requires repetitively inspecting the interior and the exterior of the main tubular spar of the rudder assembly for corrosion, taking necessary corrective action if corrosion is found, and applying corrosion protection. That AD resulted from failure of the rudder main tubular spar on a Model G164B airplane not previously affected by AD 78–08–09.

AD 78–08–09 required a one-time inspection of the interior of the rudder main tubular spar for corrosion and 300-hour repetitive inspections of the exterior of the rudder main tubular spar for corrosion.

Actions Since AD was Issued

Since we issued AD 2008–22–21, we determined the compliance time of the initial inspection for Models G–164, G–164A, and G–164B airplanes (airplanes previously affected by AD 78–08–09) allows the interior of the rudder main tubular spar to remain unchecked for corrosion for up to an additional 5 years beyond the effective date of AD 2008–22–21. This compliance time does not adequately address the unsafe condition.

We are issuing this AD to detect and correct corrosion in the rudder main tubular spar, which could result in failure of the rudder main spar tube. This failure could lead to loss of directional control.

FAA's Determination

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

AD Requirements

This AD requires repetitively inspecting the interior and the exterior of the main tubular spar of the rudder assembly for corrosion, taking necessary corrective action if corrosion is found, and applying corrosion protection.

FAA's Justification and Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include Docket Number FAA–2011–0149 and Directorate Identifier 2011–CE–001–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 2,700 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Drill access hole and visual inspection [retained actions from existing AD].	4 work-hours X $85 per hour = $340	Not applicable	$340	$918,000

We have no way of determining the cost of repairs, parts replacement, or the number of airplanes that may require repair or parts replacement based on the result of the proposed inspections.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701,

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–22–21, Amendment 39–15718 (73 FR 67372, November 14, 2008) and adding the following new AD:

2011–05–07 Allied Ag Cat Productions, Inc.: Amendment 39–16616; Docket No. FAA–2011–0149; Directorate Identifier 2011–CE–001–AD.

Effective Date

(a) This AD is effective March 17, 2011.

Affected ADs

(b) This AD supersedes AD 2008–22–21, Amendment 39–15718.

Applicability

(c) This AD applies to the following Allied Ag Cat Productions, Inc. model airplanes, all serial numbers, that are certificated in any category:

MODELS

G–164	G–164A	G–164B	G–164B with 73″ wing gap.
G–164B–15T	G–164B–20T	G–164B–34T	G–164C.
G–164D	G–164D with 73″ wing gap.		

Subject

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

Unsafe Condition

(e) This AD was prompted by reports of the rudder main tubular spar failing and our determination that the previous compliance times specified for Models G–164, G–164A, and G–164B airplanes do not adequately address the unsafe condition. We are issuing this AD to detect and correct corrosion in the rudder main tubular spar, which could result in failure of the rudder main spar tube. This failure could lead to loss of directional control.

Compliance

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

Actions	Compliance	Procedures
(1) Drill an access hole and do a visual inspection using a borescope of the lower end internal cavity of the rudder main spar tube for corrosion and do a visual inspection of the exterior of the rudder main spar tube for corrosion.	Initially inspect within the next 30 days after March 17, 2011 (the effective date of this AD), unless already done within the previous 60 months. Repetitively inspect thereafter at intervals not to exceed 60 months from the last inspection.	Following Steps 1 through 3 of Grumman American Aviation Corporation Ag-Cat Service Bulletin No. 61, dated June 6, 1977.
(2) If corrosion is found during any inspection required in paragraph (f)(1) of this AD, repair in accordance with Chapter 4 of FAA Advisory Circular 43.13–1B, Chg 1, dated September 27, 2001, or replace the damaged part(s).	Before further flight after any inspection in which corrosion is found.	As specified in Steps 5 and 6 of Grumman American Aviation Corporation Ag-Cat Service Bulletin No. 61, dated June 6, 1977, and following Chapter 4 of FAA Advisory Circular 43.13–1B, Chg 1, dated September 27, 2001, which can be found at *http://rgl.faa.gov/*.
(3) After each inspection, repair, or replacement required in this AD, corrosion protect the spar tube internal cavity by filling with warm, raw linseed oil, Paralketone, or CRC3 (LPS Heavy Duty Rust Inhibitor Type 3), or suitable equivalent protector for alloy steel, and allow to drain. Seal access hole with Scotch caulking compound, a suitable silicone based sealant, or equivalent.	Before further flight after each inspection required in paragraph (f)(1) of this AD and after each repair or replacement required in paragraph (f)(2) of this AD.	As specified in Step 4 of Grumman American Aviation Corporation Ag-Cat Service Bulletin No. 61, dated June 6, 1977.
(4) Verify rigging check of the rudder	Before further flight after each inspection required in paragraph (f)(1) of this AD and after each repair or replacement required in paragraph (f)(2) of this AD.	Following Ag-Cat Maintenance Manual pages 6–14 through 6–16, copyright 1978; or Ag-Cat G–164D Maintenance Manual pages 6–24 and 6–29, copyright 1995, as applicable.

Actions	Compliance	Procedures
(5) Only install a rudder that has been inspected as specified in paragraph (f)(1) of this AD, is found free of corrosion, has had the corrosion protection applied, and has been sealed as specified in paragraph (f)(3) of this AD.	As of 30 days after March 17, 2011 (the effective date of this AD).	Not applicable.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; *phone:* (210) 308–3365; *fax:* (210) 308–3370; *e-mail: andrew.mcanaul@faa.gov*.

Material Incorporated by Reference

(i) You must use Grumman American Aviation Corporation Ag-Cat Service Bulletin No. 61, dated June 6, 1977; Ag-Cat Maintenance Manual pages 6–14 through 6–16, copyright 1978; and Ag-Cat G–164D Maintenance Manual pages 6–24 and 6–29, copyright 1995, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of Grumman American Aviation Corporation Ag-Cat Service Bulletin No. 61, dated June 6, 1977; Ag-Cat Maintenance Manual pages 6–14 through 6–16, copyright 1978; and Ag-Cat G–164D Maintenance Manual pages 6–24 and 6–29, copyright 1995, on December 19, 2008 (73 FR 67372, November 14, 2008).

(2) For service information identified in this AD, contact Allied Ag Cat Productions, Inc., 301 West Walnut Street, P.O. Box 482, Walnut Ridge, Arkansas 72479; *telephone:* (870) 886–2418.

(3) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, Missouri 64016. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on February 17, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4160 Filed 3–1–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–63949]

Technical Amendments to Rule 17a–8: Financial Recordkeeping and Reporting of Currency and Foreign Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting technical amendments to Rule 17a–8 under the Securities and Exchange Act of 1934 ("Exchange Act") to update a reference within the rule to the implementing regulations of the Currency and Foreign Transactions Reporting Act of 1970, as amended (commonly referred to as the Bank Secrecy Act or the "BSA"). The BSA's implementing regulations are promulgated and administered by the Financial Crimes Enforcement Network ("FinCEN"), a bureau within the Department of the Treasury. The reference to the BSA's implementing regulations in Rule 17a–8 is being updated in response to FinCEN's reorganization of those regulations into a new chapter of the Code of Federal Regulations ("CFR").

DATES: *Effective Date:* March 1, 2011.

FOR FURTHER CONTACT INFORMATION: John J. Fahey, Office of Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission; (202) 551–5550; 100 F Street, NE., Washington, DC 20549.

I. Supplementary Material

A. Background

The BSA,[1] as implemented through regulations issued and administered by FinCEN, requires financial institutions, including broker-dealers registered with the Commission, to make, keep, retain and report certain records that are useful for the purposes of criminal, tax, or regulatory investigations or proceedings.[2] FinCEN administers the BSA and its implementing regulations, and the Commission has oversight authority for broker-dealers' compliance with the BSA's requirements.[3] Exchange Act Rule 17a–8 requires broker-dealers to comply with the reporting, recordkeeping and record retention requirements of the BSA's implementing regulations as found in part 103 of title 31 of the CFR.[4]

FinCEN recently reorganized the BSA's implementing regulations into a new chapter within title 31 of the CFR.[5] As part of this reorganization, FinCEN moved the regulations reflected in 31 CFR Part 103 into 31 CFR Chapter X. When Chapter X becomes effective on March 1, 2011, 31 CFR Part 103 will be deleted, thereby rendering the references to "part 103 of title 31" of the CFR in Exchange Act Rule 17a–8 incorrect.

B. Technical Amendments to Rule 17a–8

The Commission is amending Rule 17a–8 to conform the current CFR references to the BSA's implementing regulations to those that will apply as a result of FinCEN's reorganization of these regulations. Accordingly, the two references to "part 103 of title 31" in Exchange Act Rule 17a–8 will be

[1] 31 U.S.C. 5311 *et seq.*

[2] *See* Section 17 of the Exchange Act (15 U.S.C. 78q) and 31 CFR 103.12 (redesignated as 31 CFR 1010.301).

[3] *See* 31 CFR 103.56(a)(6) (redesignated as 31 CFR 1010.810(a)(6)).

[4] *See* Exchange Act Release No. 18321 (December 10, 1981); 46 FR 61454 (December 17, 1981) ("Rule 17a–8 Adopting Release").

[5] Transfer and Reorganization of Bank Secrecy Act Regulation; Proposed Rule, 73 FR 66414 (November 7, 2008); Transfer and Reorganization of Bank Secrecy Act Regulation; Final Rule, 75 FR 65806 (October 26, 2010).

replaced with references to "Chapter X of title 31."

II. Certain Findings

Under the Administrative Procedure Act ("APA"), notice of proposed rulemaking is not required when an agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[6] The Commission is making technical amendments to Rule 17a–8 to update the reference to the BSA implementing regulations. The Commission finds that because the amendment is technical in nature and is being made solely to reflect the changes in applicable references to the BSA's implementing regulations, publishing the amendment for comment is unnecessary.[7]

The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[8] Due to the need to coordinate the effectiveness of the amendment to Rule 17a–8 with the effective date of FinCEN's rule reorganization scheduled to take effect on March 1, 2011, and for the same reasons described above with respect to notice and opportunity for comment, the Commission finds that there is good cause for these technical amendments to take effect on March 1, 2011.

III. Consideration of Competitive Effects of Amendment

Section 3(f) of the Exchange Act,[9] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.[10]

Because the amendments to Exchange Act Rule 17a–8 are technical in nature, and do not impose any additional requirements beyond those already required, we do not anticipate that the amendments would have a significant effect on efficiency, competition, or capital formation, and we do not anticipate that any competitive advantages or disadvantages would be created.

IV. Statutory Authority

We are adopting this technical amendment to Rule 17a–8 under the authority set forth in the Exchange Act, in particular, Sections 3, 10, 15, 17 and 23 thereof.[11]

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 240.17a–8 by removing the phrase "part 103" in the two places it appears and adding in its place "Chapter X."

Dated: February 23, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–4694 Filed 3–1–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 5 U.S.C. 553(b).

[7] For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act ("RFA") or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of RFA analysis, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

[8] *See* 5 U.S.C. 553(d)(3).

[9] 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78w(a)(2).

[11] 15 U.S.C. 78c, 78j, 78*o,* 78q, and 78w.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. FDA–2010–F–0200]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to permit the use of hydrogen peroxide as an antimicrobial agent in the manufacture of modified whey by ultrafiltration methods. This action is in response to a petition filed by Fonterra (USA), Inc.

DATES: This rule is effective March 2, 2011. Submit either electronic or written objections and requests for a hearing by April 1, 2011. See section VI of this document for information on the filing of objections. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 2, 2011.

ADDRESSES: You may submit either electronic or written objections and requests for a hearing, identified by Docket No. FDA–2010–F–0200, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following way:

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

Written Submissions

Submit written objections in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (For paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2010–F–0200 for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting objections, *see* the "Objections" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1282.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of April 28, 2010 (75 FR 22411), FDA announced that Fonterra (USA), Inc., c/o Burdock Group, 801 N. Orange Ave., suite 710, Orlando, FL 32801 filed a food additive petition (FAP 0A4781). The petition proposed to amend the food additive regulations in part 173—*Secondary Direct Food Additives Permitted in Food for Human Consumption* (21 CFR part 173) to provide for the safe use of hydrogen peroxide as an antimicrobial agent in the manufacture of modified whey by ultrafiltration methods. In ultrafiltration, the whey stream is directed under pressure against membranes that permit undesirable substances to pass through the membranes while retaining the whey protein.

Hydrogen peroxide is currently affirmed as generally recognized as safe (GRAS) for use as an antimicrobial agent in the preparation of modified whey by electrodialysis methods at a maximum treatment level of 0.04 percent in the whey (§ 184.1366 (21 CFR 184.1366)). As a condition of use, the regulation requires that residual hydrogen peroxide be removed from the whey during processing by appropriate chemical and physical means.

Under 21 CFR 184.1(b)(2), a substance affirmed as GRAS with specific limitations may be used in food only within such limitations, including the category of food, functional use, and level of use. Therefore, any additional uses of hydrogen peroxide in processing food beyond those limitations set out in § 184.1366 requires either a food additive regulation or an amendment of § 184.1366. The current petition proposes to amend the food additive regulations to provide for the use of hydrogen peroxide in the preparation of modified whey by ultrafiltration methods, as an alternative to electrodialysis methods, at a maximum use level of 0.001 percent by weight of the whey, providing that residual hydrogen peroxide is removed from the whey during processing by appropriate chemical and physical means.

II. Conclusion

FDA reviewed data in the petition and other available relevant material to evaluate the safety of the use of hydrogen peroxide as an antimicrobial agent in the production of modified whey prepared by ultrafiltration methods. Based on this information, the Agency concludes that the proposed use of the additive will accomplish the intended technical effect, and that, since the proposed use of hydrogen peroxide in the preparation of modified whey by ultrafiltration would be substitutional for its already-regulated use in the preparation of modified whey by electrodialysis under § 184.1366, the exposure to hydrogen peroxide will not increase and may potentially decrease due to a lower maximum use level than what is currently permitted in the manufacture of modified whey by electrodialysis. Based on this information, FDA concludes that the proposed use of the additive is safe and the additive will achieve its intended technical effect as an antimicrobial agent under the proposed conditions of use. Therefore, the regulations in 21 CFR part 173 should be amended as set forth in this document.

III. Public Disclosure

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition will be made available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (*see* **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), the Agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The Agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 0A4781 (75 FR 22411). No new information or comments have been received that would affect the Agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written objections by (*see* **DATES**). Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. It is only necessary to send one set of documents. It is no longer necessary to send three copies of all documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VII. Section 301(ll) of the Federal Food, Drug, and Cosmetic Act

FDA's review of this petition was limited to section 409 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act). This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, the Food and Drug Administration Amendments Act of 2007, which was signed into law on September 27, 2007, amended the FD&C Act to, among other things, add section 301(ll) (21 U.S.C. 331(ll)). Section 301(ll) of the FD&C Act prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been

instituted and their existence has been made public, unless one of the exceptions in section 301(ll)(1) to (ll)(4) applies. In our review of this petition, FDA did not consider whether section 301(ll) of the FD&C Act or any of its exemptions apply to food containing this additive. Accordingly, this final rule should not be construed to be a statement that a food containing this additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll) of the FD&C Act. Furthermore, this language is included in all food additive final rules and therefore should not be construed to be a statement of the likelihood that section 301(ll) of the FD&C Act applies.

List of Subjects in 21 CFR Part 173

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. Section 173.356 is added to subpart D to read as follows:

§ 173.356 Hydrogen peroxide.

Hydrogen peroxide (CAS Reg. No. 7722–84–1) may be safely used to treat food in accordance with the following conditions:

(a) The additive meets the specifications of the *Food Chemicals Codex,* 7th ed. (2010), pp. 496 and 497, which is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the United States Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852 (Internet address *http://www.usp.org*). Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2163, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal regulations/ibr_locations.html.*

(b) The additive is used as an antimicrobial agent in the production of modified whey (including, but not limited to, whey protein concentrates and whey protein isolates) by ultrafiltration methods, at a level not to exceed 0.001 percent by weight of the whey, providing that residual hydrogen peroxide is removed by appropriate chemical or physical means during the processing of the modified whey.

Dated: February 16, 2011.

Susan M. Bernard,

Acting Director, Office of Regulations, Policy and Social Services, Center for Food Safety and Applied Nutrition.

[FR Doc. 2011–4497 Filed 3–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 558

[Docket No. FDA–2011–N–0003]

Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of a New Animal Drug Applications; Phenylbutazone; Pyrantel; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

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

DATES: This rule is effective March 14, 2011.

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

SUPPLEMENTARY INFORMATION: The sponsors have requested that FDA withdraw approval of the three NADAs listed in table 1 of this document because the products are no longer manufactured or marketed:

TABLE 1—VOLUNTARY REQUESTS FOR WITHDRAWAL OF APPROVAL OF THREE NADAS

Sponsor	NADA No. product (established name of drug)	21 CFR section affected (sponsor drug labeler code)
First Priority, Inc., 1590 Todd Farm Dr., Elgin, IL 60123	NADA 48–647; Phenylbutazone Boluses (phenylbutazone).	§ 520.1720a (058829).
Yoder Feed, Division of Yoder, Inc., Kalona, IA 52247 ...	NADA 96–161; Hy-Con TYLAN Premix (tylosin phosphate).	§ 558.625 (035369).
Triple "F", Inc., 10104 Douglas Ave., Des Moines, IA 50322.	NADA 119–062; Cadco-BN-10 BANMINTH Premix (pyrantel tartrate).	§ 558.485 (011490).

Truow Nutrition, Inc., 1590 Todd Farm Dr., Elgin, IL 60123 (Truow) has informed FDA that it is the owner of five feed premix NADAs previously owned by milling companies which it has purchased. NADA 100–352 was owned by NutriBasics Co., last doing business at P.O. Box 1014, Wilmar, MN 56201. NADA 107–002 and NADA 123–000 were owned by Seeco, Inc., also last doing business at P.O. Box 1014, Wilmar, MN 56201. NADA 133–833 and NADA 135–243 were owned by Southern Micro-Blenders, Inc., last doing business at 3801 N. Hawthorne St., Chattanooga, TN 37406. Truow has requested that FDA withdraw approval of the five NADAs in table 2 of this document because they are no longer manufactured or marketed:

TABLE 2—VOLUNTARY REQUESTS FOR WITHDRAWAL OF APPROVAL OF FIVE NADAS BY TRUOW NUTRITION, INC.

Previous sponsor	NADA No. product (established name of drug)	21 CFR section affected (sponsor drug labeler code)
NutriBasics Co., P.O. Box 1014, Wilmar, MN 56201	NADA 100–352; Seeco T–10 Premix (tylosin phosphate).	§ 558.625 (053740).
Seeco, Inc., P.O. Box 1014, Wilmar, MN 56201	NADA 107–002; Seeco TYLAN-Sulfa 10 Premix (tylosin phosphate and sulfamethazine).	Not codified.
Seeco, Inc., P.O. Box 1014, Wilmar, MN 56201	NADA 123–000; Super Swine Wormer B–9 BANMINTH(pyrantel tartrate).	§ 558.485 (011749).
Southern Micro-Blenders, Inc., 3801 N. Hawthorne St., Chattanooga, TN 37406.	NADA 133–833; TYLAN 10 Premix (tylosin phosphate)	§ 558.625 (049685).
Southern Micro-Blenders, Inc., 3801 N. Hawthorne St., Chattanooga, TN 37406.	NADA 135–243; Swine Guard-BN BANMINTH Premix (pyrantel tartrate).	§ 558.485 (049685).

In a notice published elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADA 48–647, 96–161, 100–352, 107–002, 119–062, 123–000, 133–833, and 135–243, and all supplements and amendments thereto, is withdrawn, effective March 14, 2011. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these withdrawals of approval.

Following these changes of sponsorship, Yoder Feed, Division of Yoder, Inc., Triple "F", Inc., NutriBasics Co., Seeco, Inc., and Southern Micro-Blenders, Inc., are no longer the sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for these firms.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entries for "Triple "F", Inc." and "Yoder Feed, Division of Yoder, Inc."; and in the table in paragraph (c)(2), remove the entries for "011490", "011749", "035369", "049685", and "053740".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 4. In § 520.1720a, revise paragraph (b)(6) to read as follows:

§ 520.1720a Phenylbutazone tablets and boluses.

* * * * *

(b) * * *

(6) No. 058829 for use of 100-mg or 1-g tablets in dogs and horses.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

■ 6. In § 558.485, revise the section heading and paragraph (b)(3) to read as follows:

§ 558.485 Pyrantel.

* * * * *

(b) * * *

(3) Nos. 010439, 012286, 016968, and 017790: 9.6 and 19.2 grams per pound for use as in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

* * * * *

§ 558.625 [Amended]

■ 7. In § 558.625, remove and reserve paragraphs (b)(8), (b)(38), and (b)(80).

Dated: February 18, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–4546 Filed 3–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 516

[Docket No. FDA–2010–N–0534]

RIN 0910–AG58

New Animal Drugs for Minor Use and Minor Species; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of March 30, 2011, for the final rule that appeared in the **Federal Register** of November 15, 2010 (75 FR 69586). The direct final rule amends the regulations regarding new animal drugs for minor use and minor species (MUMS) to update language and clarify the intent of the regulations consistent with the preambles to the proposed and final rules. This document confirms the effective date of the direct final rule.

DATES: Effective date confirmed: March 30, 2011.

FOR FURTHER INFORMATION CONTACT: Meg Oeller, Center for Veterinary Medicine (HFV–50), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9005, *e-mail: margaret.oeller@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 15, 2010 (75 FR 69586), FDA solicited comments concerning the direct final rule for a 75-day period ending January 31, 2011. FDA stated that the effective date of the

direct final rule would be on March 30, 2011, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371. Accordingly, the amendments issued thereby are effective.

Dated: February 24, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4593 Filed 3–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1030]

RIN 1625–AA09

Drawbridge Operation Regulation; Duluth Ship Canal, Duluth-Superior Harbor, MN

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a drawbridge opening schedule for the Duluth Aerial Lift Bridge for vessels under 300 gross tons. Scheduled drawbridge openings will improve traffic congestion in the area and enhance safety for all modes of transportation.

DATES: This rule is effective April 1, 2011.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–1030 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1030 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone (216) 902–6085, e-mail *lee.d.soule@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Commander, Ninth Coast Guard District, published a temporary deviation from these regulations, with request for comments, on April 22, 2010, in the **Federal Register** (75 FR 20918). The temporary deviation was used to test a new bridge schedule during the 2010 navigation and tourist season. On December 8, 2010, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Duluth Ship Canal, Duluth-Superior Harbor, MN. in the **Federal Register** (75 FR 76324). We received two comments in response to the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The Duluth Aerial Bridge is located 0.25 miles from Duluth Harbor North Pier Light at the lakeward end of the Duluth Ship Canal. It is a vertical lift type bridge that provides 15 feet of vertical clearance in the down position and up to 141 feet in the open position. The bridge currently opens on signal for all vessel traffic that requires a bridge opening. Marine traffic on the waterway consists of both large and smaller commercial vessels, as well as both power and sail recreational vessels. Pursuant to 33 CFR 117.8 various entities in Duluth requested scheduled openings instead of opening on signal. The requesting entities included the City of Duluth, the Duluth Fire Department-Emergency Management, the Duluth Police Department, the Park Point Community Association, and the Canal Park Business Association. The scheduled drawbridge openings were requested during the peak navigation and tourist season to improve the flow of vehicular traffic over the bridge, relieve vehicular traffic congestion near the bridge and on city streets on both sides of the bridge (Park Point and Canal Park), improve access and response times for emergency response entities, and enhance pedestrian safety in the vicinity of the bridge. The test schedule allowed for scheduled bridge openings on the hour and half-hour for all vessels under 300 gross tons between the hours of 6 a.m. and 9 p.m., seven days per week, and on signal between 9 p.m. and 6 a.m., from May 3 to October 29, 2010. The bridge continued to open on signal at all times for all vessels over 300 gross tons and Federal, state, and local government vessels, vessels in distress, commercial vessels engaged in rescue or emergency salvage operations, vessels engaged in pilot duties, and vessels seeking shelter from severe weather. The City of Duluth collected data throughout the test period related to vehicular and vessel traffic counts, and the number of bridge openings. In addition to the data collected, each stakeholder had the opportunity to amplify their written comments and provide additional direct input to the Coast Guard during the October 20, 2010 meeting. During the stakeholder meeting it was generally agreed by all parties that the scheduled bridge openings appeared to improve the general flow of vehicular traffic on both sides of the bridge and reduced vehicular traffic congestion. Regarding the time of year and hours each day that the scheduled openings would apply, it was generally agreed during the stakeholders meeting that the scheduled openings would be beneficial and effective between Memorial Day and Labor Day each year between the hours of 7 a.m. and 9 p.m. The data below collected by the City of Duluth illustrates support for the times and dates:

	May	June	July	Aug	Sep	Oct
TOTAL VESSELS UNDER 300 GROSS TONS						
2009	383	1287	2015	1974	1331	212
2010	528	1066	2088	1430	1016	380
TOTAL BRIDGE OPENINGS						
2009	320	841	1097	1184	800	350
2010	300	576	860	630	752	429

	May	June	July	Aug	Sep	Oct
TOTAL VEHICLES (BOTH DIRECTIONS) (Vehicular counts were not collected in 2009)						
2010	102,564	210,539	266,000	230,668	160,591	163,110

	6 a.m.–7 a.m.	7 a.m.–8 a.m.
TOTAL AVERAGE VEHICLES FOR EACH HOUR		
June	68.20	97.53
July	58.77	87.80
August	50.04	84.09

In addition to the two scheduled openings per hour, vessels will continue to have access to the harbor through the alternate Superior, Wisconsin, Entry Channel, as well as passage thru the Aerial Bridge during unscheduled openings for commercial vessels. This rule will provide for the reasonable balance of all modes of transportation and effectively accomplish the requested goal of improving traffic congestion and safety in the area of the Duluth Aerial Bridge. This final rule also adjusts the current required advance notice requirement for vessels from 24-hours to 12-hours vessels between January 1 and March 15.

Discussion of Comments and Changes

The Coast Guard received two comments regarding the NPRM, one that was successfully received by the Docket Management Facility, and the second by direct email. Both comments were from private citizens. The first comment cited that members of the Park Point Community Association were invited to the stakeholder meeting on October 20, 2010 described in the NPRM, however no representative from Park Point Community Association attended, that there was no provision in the proposed rule providing priority for emergency vehicles to cross the bridge, and that the proposed schedule should be extended to twelve months instead of providing only for the peak tourist season.

The October 20, 2010 stakeholders meeting was attended by a Duluth City Councilwoman, who stated at the meeting she was representing Park Point residents. Additionally, all Park Point residents had the opportunity to provide comments during the test deviation as well as during the comment period for the NPRM. Regarding priority for emergency vehicles, 33 CFR 117.31(a) states that upon receiving notification that an emergency vehicle is responding to an emergency situation, a drawtender must make all reasonable efforts to have the drawspan closed at the time the emergency vehicle arrives.

As described in the Basis and Purpose section above, all data, and all other comments, indicate that the dates and times in this final rule are the appropriate dates and times for scheduled drawbridge openings, and not throughout the whole year.

The second comment, received by direct email, was from a local recreational vessel operator. The comment stated no general objection to the schedule, but he also stated the schedule did not appear to improve general vehicular and pedestrian traffic congestion. All other accounts of the scheduled openings indicate that the schedule has helped reduce traffic congestion and improved safety for all modes of transportation.

The Coast Guard decided not to make any changes to the proposed rule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The rule will establish permanent scheduled openings and revise the advance notice time during winter seasons from twenty-four hours to twelve hours. The scheduled bridge openings are expected to improve vehicular traffic congestion and safety near the bridge while still providing for reasonable openings for vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule continues to provide at least two drawbridge openings per hour between 7:00 a.m. and 9 p.m. each day, and openings at any time during all other hours, as well as during unscheduled transits of commercial vessels. The test schedule implemented this year resulted in only minor adjustments in schedules or operations for all entities. Additionally, all vessels that do not require bridge openings may transit the drawbridge at any time, and the alternate Superior, Wisconsin, Entry Channel may be used by all vessels at any time.

Assistance for Small Entities

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under figure 2–1, paragraph (32(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.661 to read as follow:

§ 117.661 Duluth Ship Canal (Duluth-Superior Harbor).

The draw of the Duluth Ship Canal Aerial bridge, mile 0.25 at Duluth, shall open on signal; except that, from the Friday before Memorial Day through the Tuesday after Labor Day each year, between the hours of 7 a.m. and 9 p.m., seven days a week, the drawbridge shall open on the hour and half-hour for vessels under 300 gross tons, if needed; and the bridge will open on signal for all vessels from 9 p.m. to 7 a.m., seven days a week, and at all times for Federal, state, and local government vessels, vessels in distress, commercial vessels engaged in rescue or emergency salvage operations, commercial-assist towing vessels engaged in towing or port operations, vessels engaged in pilot duties, vessels seeking shelter from severe weather, and all commercial vessels 300 gross tons or greater. From January 1 through March 15, the draw shall open on signal if at least 12 hours notice is given. The opening signal is one prolonged blast, one short blast, one prolonged blast, one short blast. If the drawbridge is disabled, the bridge authorities shall give incoming and outgoing vessels timely and dependable notice, by tug service if necessary, so that the vessels do not attempt to enter the canal.

Dated: February 7, 2011.

M.N. Parks,

Rear Admiral, U. S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2011–4591 Filed 3–1–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR part 165

[Docket No. USCG–2011–0086]

RIN 1625–AA00

Safety Zone; Soil Sampling; Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the North Branch of the Chicago River near Chicago, Illinois. This zone is intended to restrict vessels from a portion of the North Branch of the Chicago River due to soil sampling in this area. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards

associated with the soil sampling efforts.

DATES: This rule is effective from 7 a.m. on March 1, 2011, until 5 p.m. on March 3, 2011. This rule will be enforced daily from 7 a.m. until 5 p.m. on March 1, 2, and 3, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0086 and are available online by going to *www.regulations.gov,* inserting USCG–2011–0086 in the "Keyword" box, and then clicking "search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at 414–747–7154 or *Adam.D.Kraft@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for this sampling were not received by the Coast Guard until February 7, 2011. Furthermore, the Coast Guard has reached out to potentially affected waterway users and has determined that potential impacts as a result of this safety zone will be minimal. Given the short time frame, low impact of the zone, and hazards associated with soil sampling, delaying the enactment of this rule would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A 30-day notice period is not possible given the short time frame for enacting this regulation. Given the hazards created by soil sampling, delaying the effective date of this rule would be contrary to the public interest.

Background and Purpose

This temporary safety zone is necessary to protect vessels from the hazards associated with the soil sampling efforts. The use of the machinery associated in these soil sampling efforts pose serious risks of injury to persons and property. As such, the Captain of the Port, Sector Lake Michigan, has determined that the sampling effort does pose significant risks to public safety and property and that a safety zone is necessary.

Discussion of Rule

The safety zone will encompass all U.S. navigable waters of the North Branch of the Chicago River in the vicinity of North Avenue and Fullerton Avenue between Mile Marker 328.0 and Mile Marker 329.5 of the North Branch of the Chicago River in Chicago, IL. [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the North Branch of the Chicago River between 7 a.m. until 5 p.m. on March 1st, 2nd, and 3rd, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. Vessel traffic will be minimal due to the time of year that this closure will occur and because the location of the safety zone is in an area that typically does not experience high volumes of vessel traffic. Several commercial traffic entities have already been contacted concerning this closure and have confirmed that it will not affect them in a negative way.

In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, or his or her on scene representative to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone and is therefore categorically excluded under paragraph 34(g) of the Instruction.

A final environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0086 to read as follows:

§ 165.T09–0086 Safety Zone; Soil Sampling, North Branch of the Chicago River, Chicago, Illinois

(a) *Location.* The safety zone will encompass all U.S. navigable waters of the North Branch of the Chicago River in the vicinity of North Avenue and Fullerton Avenue between Mile Marker 328.0 and Mile Marker 329.5 of the North Branch of the Chicago River in Chicago, IL. [DATUM: NAD 83].

(b) *Effective period.* This regulation is effective from 7 a.m. on March 1, 2011 until 5 p.m. on March 3, 2011. This regulation will be enforced daily from 7 a.m. until 5 p.m. on March 1, 2, and 3, 2011. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may suspend and restart the enforcement of the safety zone during the effective period at any time.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Lake Michigan, is any Coast Guard

commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake Michigan, will be in the vicinity of the safety zone and will have constant communications with the involved safety vessels which will be provided by the contracting company.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

Dated: February 18, 2011.

L. Barndt,

Captain, U.S. Coast Guard. Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011–4631 Filed 3–25–11; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0091]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor on the evening of March 12, 2011. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks events. This rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter the safety zone without the permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced from 6:45 p.m. to 7:15 p.m. on March 12, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7154 or *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone; 33 CFR 165.931—Chicago Harbor, Navy Pier Southeast, Chicago, IL for the following event:

(1) *Navy Pier Fireworks;* March 12, 2011 from 6:45 p.m. through 7:15 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago IL and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: February 18, 2011.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011–4714 Filed 3–1–11; 8:45 am]

BILLING CODE 9110–04–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1281

[NARA–07–0005]

RIN 3095–AA82

Presidential Library Facilities; Correction

AGENCY: National Archives and Records Administration.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to regulations related to architectural and design standards for Presidential libraries and information required in NARA's reports to Congress before accepting title to or entering into an agreement to use land, a facility, and equipment as a Presidential library.

DATES: This regulation is effective March 2, 2011.

FOR FURTHER INFORMATION CONTACT: Laura McCarthy at (301) 837–3023.

SUPPLEMENTARY INFORMATION:

In the final regulations (NARA–07–0005) published in the **Federal Register** on Tuesday, June 17, 2008 (73 FR 34197) that are the subject of this correction, NARA adopted and incorporated by reference ANSI/BOMA Z65.1–1996 as the standard for measuring the square footage of a Presidential library facility and the value for calculating the endowment. The standard was incorrectly listed in § 1281.2(b)(1) as being referenced in §§ 1281.3 and 1281.8; the correct references are §§ 1281.3 and 1281.16.

List of Subjects in 36 CFR Part 1281

Archives and records, Federal buildings and facilities, Incorporation by reference, Reporting and recordkeeping.

Accordingly, 36 CFR part 1281 is corrected by making the following correcting amendment:

PART 1281—PRESIDENTIAL LIBRARY FACILITIES

■ 1. The authority citation for part 1281 continues to read as follows:

Authority: U.S.C. 2104(a), 2112.

■ 2. Revise § 1281.2(b)(1) to read as follows:

§ 1281.2 What publications are incorporated by reference?

* * * * *

(b) * * *

(1) ANSI/BOMA Z65.1–1996, Standard Method for Measuring Floor Areas in Office Buildings (the BOMA

Standard), approved June 7, 1996; IBR approved for §§ 1281.3, and 1281.16.

* * * * *

Dated: February 24, 2011.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2011–4612 Filed 3–1–11; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN41

Hospital and Outpatient Care for Veterans Released From Incarceration to Transitional Housing

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms as final a proposed rule that amends the Department of Veterans Affairs (VA) medical regulations to authorize VA to provide hospital and outpatient care to a veteran in a program that provides temporary housing upon release from incarceration in a prison or jail. The final rule permits VA to work with these veterans while they are in these programs with the goal of continuing to work with them after their release, which will assist in preventing homelessness in this population of veterans.

DATES: This final rule is effective April 1, 2011.

FOR FURTHER INFORMATION CONTACT: James McGuire, Program Manager, Healthcare for Re-entry Veterans, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1591. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1710(h), VA is not required "to furnish care to a veteran to whom another agency of Federal, State, or local government has a duty under law to provide care in an institution of such government." VA implemented this statute in 38 CFR 17.38(c)(5). Generally, § 17.38(c)(5) bars VA from providing "[h]ospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services." Typically, government agencies have a duty to provide medical care to inmates who have been released from incarceration in a prison or jail to a temporary housing program (such as a community residential re-entry center or halfway house).

This duty may exist even though the responsible government agency expects residents in these programs to arrange for their own medical care. Irrespective of whether a duty exists, however, VA wants to be able to provide hospital and outpatient care to eligible veterans in these programs. Under § 17.38(c)(5), VA cannot provide care to veterans in these programs if the other government agency has a duty to provide the care unless that agency is willing to pay VA for the care by contract.

In a proposed rule published May 12, 2010, we proposed to amend § 17.38 to establish that the exclusion in paragraph (c)(5) does not apply to any veteran who is released from incarceration to a temporary housing program. We explained that this amendment is necessary to authorize VA hospital and outpatient care for these veterans who often require additional assistance in successfully transitioning from incarceration.

VA wants to provide care to these veterans because VA has found that upon release from jail or prison these veterans are particularly at risk of not receiving adequate medical care, and in many cases become homeless, as a result of not receiving such care, after their release from temporary housing programs. Under 38 U.S.C. 2022(a), VA is charged with reaching out "to veterans at risk of homelessness, including particularly veterans who are being discharged or released from institutions after * * * imprisonment." Outreach workers for the Veterans Health Administration report that veterans with acute or chronic medical or psychiatric problems who are treated while incarcerated, often have difficulty obtaining similar treatment during a transitional period. In particular, if mental health issues are not addressed during the transitional period, upon release, many of these veterans are rendered incapable of finding or maintaining appropriate housing.

In addition to being an important component of VA's duty to attempt to prevent veterans from becoming homeless, establishing that the exclusion in 38 CFR 17.38(c)(5) does not apply to veterans who are residents in temporary housing programs offers potentially significant public benefits and will further the success of other VA policies. For example, section 20 of VHA Handbook 1160.01 specifically requires VA to "engage with veterans being released from prison in need of care." VHA Handbook 1160.01, section 20(a)(2). As significant numbers of veterans in these programs have difficulty obtaining medical treatment comparable to the treatment they received in prison, some begin to believe the only way they can obtain treatment is to violate the terms of their release and return to prison. A 2008 Urban Institute study of a large re-entry population cohort, found health care played a key role in the first months of community re-adjustment and reduced recidivism. Mallik-Kane, K, and Visher, C.A., *Health and prisoner re-entry: How physical, mental, and substance abuse conditions shape the process of re-integration.* Urban Institute Justice Policy Center: Washington, DC (2008). In particular, the study noted that access to medications for chronic health and mental health conditions is a low-cost powerful tool in preventing recidivism.

We received three comments on the proposed rule. All of the comments support the substance of the proposed rule. One commenter recommended that VA add a number of services to its medical benefits package, and made strategic recommendations for VA housing programs. This rulemaking simply removes a bar that prevented veterans, who are released from incarceration into temporary housing, from receiving outpatient and hospital care under the medical benefits package. Because the commenter suggested that additional services be added to this package, we do not believe that these comments are within the scope of this rulemaking. However, to the extent that the commenter seeks to connect veterans to needed care and support services, we note that VA currently provides a number of programs that provide housing and other support services to veterans. Nothing prevents formerly incarcerated veterans from taking advantage of any of the programs for which they qualify.

For the foregoing reasons, VA amends 38 CFR 17.38 to revise the exclusion in the VA medical benefits package for a veteran who is a patient or inmate in an institution of another government agency so that the exclusion does not apply to a veteran who is a resident of a temporary housing program. For purposes of this rule, a "temporary housing program," includes community residential re-entry centers, halfway houses, and similar residential facilities.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more

(adjusted annually for inflation) in any given year. This rule has no such effect on state, local and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and when regulation is necessary to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action planned or taken by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

This rule does not contain any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule only affects individuals, not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R, Gingrich, Chief of Staff, approved this document on February 24, 2011 for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: February 25, 2011.

William F. Russo,

Director, Regulations Management, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Revise § 17.38(c)(5) to read as follows:

§ 17.38 Medical benefits package.

* * * * *

(c) * * *

(5) Hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services. This exclusion does not apply to veterans who are released from incarceration in a prison or jail into a temporary housing program (such as a community residential re-entry center or halfway house).

* * * * *

[FR Doc. 2011–4686 Filed 3–1–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 51

RIN 2900–AN59

Update to NFPA 101, Life Safety Code, for State Home Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule without change the proposed rule to amend the Department of Veterans Affairs (VA) regulations governing the physical environment of State Home facilities. The final rule will require State Home facilities that receive a per diem for providing nursing home care to eligible veterans to meet certain provisions of the 2009 edition of the National Fire Protection Association's NFPA 101, Life Safety Code. The change is designed to assure that State Home facilities meet current industry-wide standards regarding life safety and fire safety.

DATES: *Effective Date:* This final rule is effective April 1, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this rule as of April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Theresa Hayes at (202) 461–6771, Office of Geriatrics and Extended Care, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (The telephone number above is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 7, 2010 (75 FR 17644), VA proposed to amend 38 CFR 51.200, which governs the physical environment of facilities for which VA pays per diem to a state for providing nursing home care to eligible veterans. We proposed to update the regulation to require State Home facilities to meet certain provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (2009 edition) (NFPA 101), and proposed to incorporate that edition by reference. We provided a 60-day comment period and received one comment.

The comment was from the National Fire Protection Association. The commenter noted that there are several differences between the 2006 and 2009 editions of NFPA 101. The commenter noted that the 2009 edition clarifies the circumstances in which a "change in occupancy" classification would be considered when an existing building is

converted into a nursing home; clarifies the provisions for multiple and separate occupancy for nursing homes; enhances door locking provisions based on clinical need or specialized security measures; recognizes the use of aerosol-based alcohol hand rub dispensers; and clarifies latching provisions for certain doors that open into/onto corridors. In the proposed rule, we noted that we were not aware of any significant changes from the 2006 edition to the 2009 edition. The commenter acknowledged that the differences between the two editions are insignificant. Because none of the applicable updates to the 2009 edition of NFPA 101 require costly or significant changes to the facilities governed by this rule, we make no changes based on this comment.

This final rule amends § 51.200 as proposed without changes, and incorporates by reference NFPA 101, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule will have no such effect on state, local, and tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

This document contains no new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it does not constitute a significant regulatory action under the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rulemaking will affect veterans and State Homes. The State Homes that will be subject to this rulemaking are state government entities under the control of state governments. All State Homes are owned, operated and managed by state governments except for a small number that are operated by entities under contract with state governments. These contractors are not small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.026, Veterans State Adult Day Health Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the **Federal Register** for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on February 8, 2011, for publication.

List of Subjects in 38 CFR Part 51

Administrative practice and procedure, Claims, Day care, Dental health, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Incorporation by reference, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: February 23, 2011.

Robert C. McFetridge,

Director, Regulations Policy and Management, Department of Veterans Affairs.

For the reasons stated above, VA amends 38 CFR part 51 as follows:

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1741–1743, 1745.

■ 2. Amend § 51.200, by removing the phrase "NFPA 101, Life Safety Code (2006 edition)" each place it appears and adding, in its place, "NFPA 101, Life Safety Code (2009 edition)".

[FR Doc. 2011–4430 Filed 3–1–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0996; FRL–8859–5]

Potassium Hypochlorite; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes the exemption from the requirement of a tolerance for residues of Potassium hypochlorite. Enviro Tech Chemical Services, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting that Potassium hypochlorite in end-use products be eligible for the exemption from the requirement of a tolerance.

DATES: This regulation is effective March 2, 2011. Objections and requests for hearings must be received on or before May 2, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see* also Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0996. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Wanda Henson, Antimicrobials Division (7510P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–6345; *e-mail address: henson.wanda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a dairy cattle milk producer, food manufacturer, or beverage manufacturer. Potentially affected entities may include, but are not limited to:

- Dairy Cattle Milk Production (NAICS code 11212).
- Food manufacturing (NAICS code 311).
- Beverage Manufacturing (NAICS code 31212).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0996 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 2, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0996, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Exemption

In the *Federal Register* of Wednesday, January 12, 2011 (76 FR 2110) (FRL–8860–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 0F7767) by Enviro Tech Chemical Services, Inc, Modesto, CA 95358. The petition requested that 40 CFR part 180 be amended to establish an exemption from the requirement of a tolerance for potassium hypochlorite in or on apple; artichoke; asparagus; brussel sprouts; carrot; cauliflower; celery; cherry; cabbage; lettuce; fruits, citrus; cucumber; onion, green; melon; peach; nectarine; plum; pear; pepper, bell; potato; radish; fruit, stone; and tomato. That notice referenced a summary of the petition prepared by Enviro Tech Chemical Services, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . * * *"

Consistent with section 408(c)(2)(A) of FFDCA, and the factors specified in section 408(c)(2)(B) of FFDCA, EPA has reviewed the available scientific data and other relevant information in

support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for Potassium hypochlorite, including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with potassium hypochlorite follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by potassium hypochlorite is available in the docket, *http://www.regulations.gov.*

The Agency conducted an in-depth review of the similarities between potassium hypochlorite and the existing registered active ingredients, sodium hypochlorite and calcium hypochlorite. Based upon this review, the Agency determined that the data available to support the registrations of these active ingredients are also applicable to potassium hypochlorite. No additional generic or product-specific acute, chronic or subchronic toxicological studies were required to be submitted in support of this application. All toxicology data were bridged from studies on sodium and calcium hypochlorite based on their chemical similarity.

Potassium hypochlorite is corrosive and can cause severe damage to the eyes and skin. Potassium hypochlorite has been assigned a Toxicity Category I, indicating the highest degree of toxicity for these acute effects. In the presence of oxygen, however, these compounds react easily with organic matter and convert readily into potassium chloride due to their simple chemical nature and structure. Exemptions from the requirement of a tolerance have been established for sodium and calcium hypochlorite used both as food contact surface sanitizers (40 CFR 180.940) and as antimicrobials used on raw agricultural commodities (40 CFR 180.1054 and 180.1235). Widely used in disinfecting water supplies for nearly a century, the hypochlorite class of chemicals has proven safe and practical to use provided that necessary precautions are taken by the user to prevent the eye and skin irritation which are inherent to all strong oxidizing agents. All documents related to this case can be found at *http://www.regulations.gov* in the document "Antimicrobial Pesticide Products; Registration Applications" page 16110 in docket ID number EPA–HQ–OPP–2009–0996.

B. Toxicological Points of Departure/Levels of Concern for Potassium Hypochlorite

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to potassium hypochlorite, EPA considered exposure under the petitioned-for exemption. EPA assessed dietary exposures from potassium hypochlorite in food as follows:

Residues of potassium hypochlorite may remain on certain food crops as a result of their disinfectant uses. However, these residues pose no dietary risks of concern to human health based on data bridged from sodium hypochlorite. Therefore, a dietary risk assessment for potential exposures to residues in food is unwarranted.

2. *Dietary exposure from drinking water.* Residues of potassium hypochlorite that may remain in drinking water as a result of the use of this chemical are not expected to pose dietary risks of concern to human health based on data bridged from sodium hypochlorite.

3. *Non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). Potassium hypochlorite is currently registered for the following residential non-dietary sites: Swimming pools, spa and hot tubs, hard, non-porous and porous surfaces, and laundry.

Although residential exposure to mixer/loader/applicators is likely from the proposed uses of potassium hypochlorite, a quantitative risk assessment is not required because adverse systemic effects attributable to the dermal and inhalation routes of exposure to potassium hypochlorite are not expected based on toxicity data bridged from sodium hypochlorite.

Label precautionary statements and the requirement that applicators wear certain personal protective equipment (goggles or face shield and rubber gloves) are sufficient to protect users from the localized, irritation effects of exposure to potassium hypochlorite. In addition, the label states that users of swimming pools may not enter treated water until the residual chlorine is measured to be between 1 ppm and 3 ppm in order to prevent acute irritation effects.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found potassium hypochlorite to share a common mechanism of toxicity with any other substances, and potassium hypochlorite does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that Potassium hypochlorite does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such

chemical, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Because potassium hypochlorite was of very low systemic toxicity, EPA did not use a safety factor analysis for assessing risk. For similar reasons, the additional safety factor for the protection of infants and children is not necessary.

E. Aggregate Risks and Determination of Safety

Based on the toxicity profile and exposure scenarios for potassium hypochlorite, EPA believes that the risks from dietary exposures to this pesticide would be minimal and without consequence to human health. Although residential use of potassium hypochlorite poses potential risks for acute eye and skin injury, it is not appropriate to aggregate the exposure related to these surface irritation effects with systemic exposure from dietary ingestion. In any event, the Agency believes that these acute risks will be sufficiently mitigated by precautionary labeling requiring protection of eyes and skin while using this pesticide.

Based on the toxicological and exposure data discussed in this preamble, EPA concludes that potassium hypochlorite will not pose a risk under reasonably foreseeable circumstances. Accordingly, EPA finds that there is a reasonable certainty of no harm will result to the general population, or to infants and children, from aggregate exposure to potassium hypochlorite residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for potassium hypochlorite.

V. Conclusion

Therefore, an exemption is established for residues of potassium hypochlorite.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements, Potassium hypochlorite.

Dated: February 23, 2011.

Joan Harrigan Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1300 is added to subpart D to read as follows:

§ 180.1300 Potassium hypochlorite; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues

of potassium hypochlorite in or on all commodities.

[FR Doc. 2011–4534 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0823; FRL–8864–9]

Difenoconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of difenoconazole in or on mango and wax jambu. Syngenta Crop Protection, Incorporated requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 2, 2011. Objections and requests for hearings must be received on or before May 2, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0823. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tony Kish, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–9443; e-mail address: *kish.tony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0823 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 2, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0823, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerances

In the **Federal Register** of January 6, 2010 (75 FR 864) (FRL–8801–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7573) by Syngenta Crop Protection, Inc., P. O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.475 be amended by establishing tolerances for residues of the fungicide, difenoconazole, [1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H–1,2,4-triazole], in or on mango at 0.09 parts per million(ppm) and waxapple at 1.5 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.*

There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance for mango, fruit from 0.09 ppm to 0.07 ppm to reflect the Agency's recommended tolerance level. Additionally, EPA corrected commodity definitions from "mango, fruit" to "mango" and "waxapple" to "wax jambu" to reflect prescribed terminology. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue, * * *."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for difenoconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with difenoconazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Difenoconazole possesses low acute toxicity by the oral, dermal and inhalation routes of exposure. It is not considered to be an eye or skin irritant and is not a dermal sensitizer.

In an acute neurotoxicity study in rats, reduced fore-limb grip strength was observed on day 1 in males and clinical signs of neurotoxicity in females at the limit dose of 2,000 milligrams/kilogram (mg/kg). This effect in males is considered as transient since it was not observed at later observation points and toxicity in females was observed only at doses exceeding the limit dose. In a subchronic neurotoxicity study in rats decreased hind limb strength was observed only in males, which was considered as nonspecific in nature.

Difenoconazole is not a developmental or reproductive toxicant. Chronic effects in mice and rat studies are seen as cumulative decreases in body weight gains.

Difenoconazole is not mutagenic. Evidence for carcinogenicity was seen only in the mice study, where liver tumors were induced at excessively high doses for carcinogenicity testing. Liver tumors were observed in mice at 300 ppm and higher. Based on excessive toxicity observed at the two highest doses of 2,500 and 4,500 ppm, the absence of tumors at two lower doses of 10 and 30 ppm, as well as, the absence of genotoxic effects, the Agency classified difenoconazole as a Group C, possible human carcinogen with a non-linear margin-of-exposure (MOE) approach for human risk characterization.

Specific information on the studies received and the nature of the adverse effects caused by difenoconazole as well as the no-observed-adverse-effects-level (NOAEL) and the lowest-observed-adverse-effects-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document entitled, "Difenoconazole FQPA Human Health Risk Assessment to Support the Establishment of Import Tolerances on Mango and Waxapple (also known as Wax jambu)," at pages 28–35, dated January 28, 2010, Document No. EPA–HQ–OPP–2009–0823–003.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, *see http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for difenoconazole used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR DIFENOCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations).	NOAEL = 25 mg/kg/day .... UF_A = 10x UF_H = 10x FQPA SF = 1x	aRfD = 0.25 mg/kg/day ..... aPAD = 0.25 mg/kg/day	Acute Neurotoxicity Study in rats LOAEL = 200 mg/kg/day in males based on reduced fore-limb grip strength in males on day 1.
Chronic dietary (All populations).	NOAEL = 0.96 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	cRfD = 0.01 mg/kg/day ..... cPAD = 0.01 mg/kg/day	Combined chronic toxicity/carcinogenicity (rat; dietary) LOAEL = 24.1/32.8 mg/kg/day (M/F) based on cumulative decreases in body-weight gains.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR DIFENOCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months).	Oral NOAEL = 1.25 mg/kg/day (dermal absorption factor = 15.3%). UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = < 100.	Reproduction and fertility effects (rat; dietary) Offspring LOAEL = 12.5 mg/kg/day based on reduction in body weight of F_0 females prior to mating, gestation and lactation.
Inhalation short-term (1 to 30 days) and Intermediate-term Inhalation (1 to 6 months).	Oral NOAEL= 1.25 mg/kg/day inhalation absorption rate = assumed as 100% UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE < 100.	Reproduction and fertility effects (rat; dietary) Offspring LOAEL = 12.5 mg/kg/day based on reduction in body weight of F_0 females prior to mating, gestation and lactation.
Cancer (Oral, dermal, inhalation).	Difenoconazole is classified as a Group C, possible human carcinogen with a non-linear (MOE) approach for human risk characterization.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to difenoconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing difenoconazole tolerances in 40 CFR 180.475. EPA assessed dietary exposures from difenoconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for difenoconazole. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues, 100 percent crop treated (PCT), and the available empirical or Dietary Exposure Evaluation Model (DEEM™) (ver. 7.81) default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance-level residues for some commodities, average field trial residues for the majority of commodities, the available empirical or DEEM™ (ver. 7.81) default processing factors, and 100 PCT.

iii. *Cancer.* No evidence of carcinogenicity was seen in rats. Evidence for carcinogenicity was seen in mice, where liver tumors were induced at doses which were considered to be excessively high for carcinogenicity testing. Liver tumors were observed in mice at 300 ppm and higher; however, based on excessive toxicity observed at the two highest doses of 2,500 and 4,500 ppm (females terminated after 2 weeks due to excessive toxicity resulting in moribundity and death), the absence of tumors at two lower doses of 10 and 30 ppm and the absence of genotoxic effects, the Agency classified difenoconazole as a Group C, possible human carcinogen with a non-linear MOE approach for human risk characterization. A MOE approach in risk assessment was chosen utilizing the NOAEL of 30 ppm (4.7 and 5.6 mg/kg/day in males and females, respectively) and the LOAEL of 300 ppm (46 and 58 mg/kg/day in males and females, respectively) from the mouse study using only those biological endpoints which were relevant to tumor development (*i.e.,* hepatocellular hypertrophy, liver necrosis, fatty changes in the liver and bile stasis). However, EPA determined that a quantitative cancer exposure assessment is unnecessary since the NOAEL (4.7 and 5.6 mg/kg/day in males and females, respectively) to assess cancer risk is higher than the NOAEL (0.96 and 1.27 mg/kg/day in males and females, respectively) to assess chronic risks. Therefore, the chronic dietary risk estimate will be protective of potential cancer risk.

iv. *Anticipated residues and percent crop treated (PCT) information.* EPA did not use PCT information in the dietary assessment of difenoconazole. EPA used anticipated residues including average field trial residues for the majority of commodities, the available empirical or DEEM™ (ver. 7.81) default processing factors; and 100 PCT information in the chronic dietary assessment for difenoconazole.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require, pursuant to FFDCA section 408(f)(1), that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* Although the subject petition is for import tolerances and therefore does not result in drinking water exposure, there are existing uses of difenoconazole registered in the United States. The drinking water assessment was conducted for parent compound only. The fate and transport database for difenoconazole were sufficient to conduct the drinking water assessment.

The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for difenoconazole in drinking water. These simulation models take into

account data on the physical, chemical, and fate/transport characteristics of difenoconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of difenoconazole for acute exposures are estimated to be 15.8 parts per billion (ppb) for surface water and 0.0128 ppb for ground water.

Chronic exposures for non-cancer assessments are estimated to be 10.4 ppb for surface water and 0.0128 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute dietary risk assessment, the water concentration value of 15.8 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration of value 10.4 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Difenoconazole is currently registered for the following uses that could result in residential exposures: Ornamentals. EPA assessed residential exposure using the following assumptions: Adults may be exposed to difenoconazole from its currently registered use on ornamentals. Residential pesticide handlers may be exposed to short-term duration (1–30 days) only. The dermal and inhalation (short-term) residential exposure was assessed for "homeowners" mixer/loader/applicator wearing short pants and short-sleeved shirts as well as shoes plus socks using garden hose-end sprayer, "pump-up" compressed air sprayer, and backpack sprayer.

No post-application exposure is expected. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Difenoconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, *see* EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Difenoconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including difenoconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.,* use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (*i.e.,* high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket Identification (ID) Number EPA–HQ–OPP–2005–0497.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* EPA determined that the available data indicated no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to difenoconazole. In the prenatal developmental toxicity studies in rats and rabbits and the 2-generation reproduction study in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses than in the maternal/parental animals. In the prenatal developmental toxicity study in rats, maternal toxicity was manifested as decreased body weight gain and food consumption at the LOAEL of 85 mg/kg/day; the NOAEL was 16 mg/kg/day. The developmental toxicity was manifested as alterations in fetal ossifications at 171 mg/kg/day; the developmental NOAEL was 85 mg/kg/day. In a developmental toxicity study in rabbits, maternal and developmental toxicity were seen at the same dose level (75 mg/kg/day). Maternal toxicity in rabbits were manifested as decreased body weight gain and decreased food consumption, while developmental toxicity was manifested as decreased fetal weight. In a 2-generation reproduction study in rats, there were decreases in maternal body weight gain and decreases in body weights of F_1 males at the LOAEL of 12.5 mg/kg/day; the parental systemic and off spring toxicity NOAEL was 1.25 mg/kg/day.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF

were reduced to 1x. That decision is based on the following findings:

i. The toxicity database is adequate for conducting a FQPA risk assessment. At this time, an immunotoxicity study is not available. However, the toxicology database for difenocanazole does not show any evidence of treatment-related effects on the immune system. The overall weight of evidence suggests that this chemical does not directly target the immune system. An immunotoxicity study is now required as a part of new data requirements in the 40 CFR part 158 for conventional pesticide registration; however, the Agency does not believe that conducting a functional immunotoxicity study will result in a lower point of departure (POD) than that currently in use for overall risk assessment, and therefore, a database uncertainty factor (UFDB) is not needed to account for lack of this study.

ii. The acute and subchronic neurotoxicity studies in rats are available. These data show that difenoconazole exhibits some evidence of neurotoxicity in the database, but the effects are transient or occur at doses exceeding the limit dose. EPA concluded that difenoconazole is not a neurotoxic compound. Based on the toxicity profile, and lack of neurotoxicity, a developmental neurotoxicity study in rats is not required nor is an additional database uncertainty factor needed to account for the lack of this study.

iii. There is no evidence that difenoconazole results in increased susceptibility of rats or rabbit fetuses to *in utero* and/or postnatal exposure in the developmental and reproductive toxicity data.

iv. There are no residual uncertainties identified in the exposure databases. A conservative dietary food exposure assessment was conducted. Acute dietary food exposure assessments were performed based on tolerance-level residues, 100 PCT, and the available empirical or DEEM™ (ver. 7.81) default processing factors. Chronic dietary exposure assessments were based on tolerance-level residues for some commodities, average field trial residues for the majority of commodities, the available empirical or DEEM™ (ver. 7.81) default processing factors, and 100 PCT. These are conservative approaches and are unlikely to understate the residues in food commodities.

EPA also made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to difenoconazole in drinking water. Post-application exposure of children as well as incidental oral exposure of toddlers is not expected. These assessments will not underestimate the exposure and risks posed by difenoconazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., "chronic exposure."

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to difenoconazole will occupy 16% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to difenoconazole from food and water will utilize 45% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of difenoconazole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Difenoconazole is currently registered for ornamentals that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to difenoconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that the combined short-term food, water, and residential exposures result in aggregate MOEs of 180 or greater. Because EPA's level of concern for difenoconazole is a MOE of 100 or below, these MOEs resulting from short-termed exposure to difenoconazole are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, difenoconazole is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for difenoconazole.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.C.1.iii., the chronic dietary risk assessment is protective of any potential cancer effects.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to difenoconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate tolerance enforcement method, method AG–575B, is available to enforce the tolerance expression. The method determines residues of difenoconazole *per se* in or on crop commodities by gas chromatography with nitrogen-phosphorus detection (GC/NPD). The method's limits of quantitation (LOQs) are 0.01–0.05 ppm. A confirmatory GC method with mass-selective detection (MSD) is also available for crop commodities. Samples from the submitted crop field trials were analyzed for residues of difenoconazole using a high performance liquid chromatography method with tandem mass spectrometry detection (LC/MS/MS), Syngenta REM 147.08, or a similar method. The methods are adequate for data collection based on acceptable concurrent method recoveries. The LOQ was 0.01 ppm for difenoconazole in mango and wax jambu.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; *telephone number:* (410) 305–2905; *e-mail address: residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established a MRL for difenoconazole in or on mango at 0.07 ppm. This MRL is the same as the tolerance established by this action for difenoconzole in the United States. Canadian and Mexican MRLs have been established for difenoconazole; however, no MRLs have been established for mango. No Codex, Canadian, and Mexican MRLs have been established for residues of difenoconazole in or on wax jambu.

C. Response to Comments

There were no public comments received on the Notice of Filing.

D. Revisions to Petitioned-For Tolerances

EPA has revised the tolerance levels proposed in the notice of filing for mango from 0.09 ppm to 0.07 ppm. The modification was made based on the available data supporting the use of difenoconazole on mango and to achieve harmonization with the established Codex MRL of 0.07 ppm residues in or on mango.

Also, the Agency corrected the commodities named in the notice from "mango fruit" to "mango" and "waxapple" to "wax jambu" to reflect EPA's prescribed terminology for these crops.

V. Conclusion

Therefore, tolerances are established for residues of difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole, in or on mango at 0.07 ppm and wax jambu at 1.5 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 18, 2011.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.475 is amended by alphabetically adding the following commodities to the table in paragraph (a)(1) to read as follows:

§ 180.475 Difenoconazole; tolerance for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Mango [1]	0.07
* * * * *	
Wax jambu [1]	1.5

* * * * *

[FR Doc. 2011–4370 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1994–0001; FRL–9274–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the AT&SF Albuquerque Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces the deletion of the northern 62-acre parcel of the AT&SF Albuquerque Superfund Site (Site) located in Albuquerque, Bernalillo County, New Mexico, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion pertains to the soil and ground water associated with the northern 62-acre parcel. After this deletion, these 62 acres will no longer be part of the Site. The other 27 acres will remain on the NPL and are not being considered for deletion as part of this action. The EPA and the State of New Mexico, through the New Mexico Environment Department (NMED), have determined that all appropriate response actions for this parcel under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, the deletion of these parcels does not preclude future actions under Superfund.

DATES: *Effective Date:* This action is effective March 2, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1994–0001. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the site information repositories. Locations, contacts, and phone numbers are:

- U.S. EPA Region 6 Library, 7th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, (214) 665–6424;
- Albuquerque Public Library, Main Downtown Branch, 501 Copper Avenue, NW., Albuquerque, New Mexico 87102, Contact: John Vittal; and,
- New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico 87505.

FOR FURTHER INFORMATION CONTACT: Katrina Higgins-Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–RL), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

SUPPLEMENTARY INFORMATION:

The portion of the site to be deleted from the NPL is: Northern 62-acre parcel of the AT&SF Albuquerque Superfund Site, located in Albuquerque, Bernalillo County, New Mexico. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** on January 5, 2011 (76 FR 510).

The closing date for comments on the Notice of Intent for Partial Deletion was February 4, 2011. One anonymous public comment was received and supported the partial deletion of the Site. EPA, in conjunction with the NMED, believes the partial deletion action remains appropriate.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 16, 2011.

Al Armendariz,

Regional Administrator, Region 6.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by revising the entry under NM for "AT&SF (Albuquerque)" to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
* * *	* * *	* * *	
NM	AT&SF Albuquerque	Albuquerque	P
* * *	* * *	* * *	

(a) * * *

P = Sites with partial deletion(s).

[FR Doc. 2011–4650 Filed 3–1–11; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 520 and 532

[Docket No. 10–03]

RIN 3072–AC38

Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is exempting licensed non-vessel-operating common carriers that enter into negotiated rate arrangements from the tariff rate publication requirements of the Shipping Act of 1984 and certain provisions and requirements of the Commission's regulations.

DATES: The final rule is effective April 18, 2011.

FOR FURTHER INFORMATION CONTACT:
Legal information: Elisa Holland, 202–523–5740, *generalcounsel@fmc.gov.*
Technical information: George A. Quadrino, 202–523–5800; Gary G. Kardian, 202–523–5856, *tradeanalysis@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

a. Summary of Proposed Rule

On May 7, 2010, the Federal Maritime Commission (FMC or Commission) issued a notice of proposed rulemaking (NPR), pursuant to its authority under sections 16 and 17 of the Shipping Act of 1984 (Shipping Act), 46 U.S.C. 40103 and 46 U.S.C. 42101, seeking comments on a proposal to exempt licensed non-vessel-operating common carriers (NVOCCs) from the rate publication requirements of the Shipping Act, subject to certain conditions.[1] The Commission found that it was within its statutory authority under Section 16 of the Shipping Act to grant such an exemption, subject to certain conditions, as doing so would not result in substantial reduction in competition or be detrimental to commerce, consistent with the Shipping Act. *See* 46 U.S.C. 40103(a). As proposed, the exemption would relieve licensed NVOCCs from their tariff rate publication obligations when entering into a "negotiated rate arrangement" (NRA). An NRA is defined as "a written and binding arrangement between a shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after the receipt of the cargo by the carrier or its agent (or the originating carrier in the case of through transportation)." Proposed Section 532.3(a). The use of NRAs would be subject to several conditions, including (1) NVOCCs who use NRAs would be required to continue publishing standard rules tariffs containing contractual terms and conditions governing shipments, including any accessorial charges and surcharges, and would be required to make their rules tariffs available to shippers free of charge; (2) NRA rates charged by NVOCCs must be mutually agreed and memorialized in writing by the date cargo is received for shipment; and (3) NVOCCs who use NRAs must retain documentation confirming the agreed rate and terms for each shipment for a period of five years, and must make such documentation promptly upon request available to the Commission pursuant to the Commission's regulations at 46 CFR 515.31(g).

Licensed NVOCCs, to the extent they enter into NRAs, would be exempt by regulation from the following provisions of the Shipping Act: Section 8(a), codified at 46 U.S.C. 40501(a)–(c) (obligation to publish an automated rate tariff); Section 8(b), codified at 46 U.S.C. 40501(d) (time volume rates); Section 8(d), codified at 46 U.S.C. 40501(e) (tariff rate increases may not be effective on less than 30 days notice but decreases may be effective immediately); Section 8(e), codified at 46 U.S.C. 40503 (carrier refunds due to a tariff error); and Section 10(b)(2)(A), codified at 46 U.S.C. 41104 (requiring adherence to published tariff rates).

The Commission also sought public comment on whether the exemption should be extended to the prohibitions of Section 10(b)(4), codified at 46 U.S.C. 41104(4) (prohibiting common carriers from unfair or unjustly discriminatory practices in services pursuant to a tariff), and Section 10(b)(8), codified at 46 U.S.C. 41104(8) (prohibiting common carriers from undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage for tariff service). Additionally, the Commission requested interested parties to submit comments on whether the exemption should be extended to foreign-based NVOCCs who are unlicensed but bonded pursuant to 46 CFR 515.21(a)(3), and on which elements, if any, qualify an NRA for a "safe harbor" that affords a presumption that the corresponding shipment is not subject to the tariff rate publication requirement.

b. Comments Received

The Commission received a total of forty-four public comments: one comment from two members of Congress; two comments from other federal agencies; nineteen from U.S.-based, licensed NVOCCs; seven from foreign unlicensed NVOCCs; four from U.S.-based trade associations; three from foreign-based trade associations; two from consultants; and six from tariff publishers and their employees.[2] On

[1] 75 FR 25151 (May 7, 2010). The proposed rule was issued following a petition filed by the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) requesting the Commission to exercise its authority under 46 U.S.C. 40103 to exempt NVOCCs from provisions of the Shipping Act requiring publication and adherence to rate tariffs for ocean transportation to the extent such transportation is provided under individually negotiated rates with shipping customers and memorialized in writing. Petition No. P1–08, *Petition of the National Customs Brokers and Freight Forwarders Association of America, Inc. for Exemption from Mandatory Rate Tariff Publication* ("Petition"), published for comment on August 11, 2008. After consideration of the Petition and the comments received, the Commission determined to initiate a rulemaking to relieve licensed NVOCCs from the costs and burdens of tariff rate publication.

[2] The Commission received written comments on the NPR from: Congressmen Mike Doyle, 14th District, Pennsylvania and Tim Murphy, 18th District, Pennsylvania (Joint Congressional Commenter); the Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section; the Department of Transportation, Office of General Counsel; Econocaribe Consolidators, Inc.; John S. Connor, Inc.; AIReS, A1 Relocation Solutions; J.W. Allen & Co., Inc.; C.H. Powell Company, NVOCC Division; The Camelot Company; BDG International, Inc.; Hanseatic Container Line Ltd. and Mid-America Overseas, Inc.; Lori Fleissner, President, Global Fairways, Inc.; M.E. Dey & Co., Inc.; Nakamura (USA) Inc.; CV International; Mohawk Global Logistics; NACA Logistics (USA) Inc. d/b/a Vanguard Logistics Services; BDP Transport, Inc., CaroTrans International, Inc. and Mallory Alexander International Logistics, LLC (Joint Commenters); UPS Ocean Freight Services; UTi, United States, Inc.; DHL–Danzas d/b/a DHL Global Forwarding d/b/a Danmar Lines Ltd.; Ocean World Lines, Inc.; Alfred Balguerie, S.A.; Damco A/S; Trans Service Line; Schenkerocean Limited; CDS Global Logistics, Inc.; Juerge Bandle, Senior Vice President, Kuehne + Nagel, Inc., agent of Blue Anchor Line, Division of Transpac Container System Ltd., Hong Kong; Panalpina, Inc. as agent for and on behalf of Pantainer, Ltd.; New York New Jersey Foreign Freight Forwarders & Brokers Association, Inc. (NYNJFFF&BA); National Industrial Transportation League (NIT League); Transportation Intermediaries Association (TIA); National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA); China Association of Shipping Agencies & Non-Vessel-Operating Common Carriers (CASA); British International Freight Association; Fedespedi-Federazione Nazionale delle Imprese di Spedizioni Internazionali; Albert Saphir d/b/a ABS Consulting; Stan Levy, Stan Levy Consulting, LLC; The Descartes Systems Group, Inc.; RateWave Tariff

Continued

May 24, 2010, the Commission held a public meeting to receive oral comments.[3] The Commission considered all comments in developing this final rule. A discussion of significant comments and the Commission's response to those comments as well as minor modifications and clarifications made to the proposed rule is provided below.

II. The Authority of the Commission to Grant the Exemption

The strong balance of the comments expressed general support for exempting NVOCCs who use NRAs from the tariff rate publication requirements of the Shipping Act and the Commission's regulations. Notably, the Department of Justice opined that the proposed elimination of the NVOCC tariff publication requirements would meet the Section 16 exemption authority standard and would be an appropriate exercise of the Commission's authority. Other commenters agreed with this analysis, further stating that the proposed exemption will allow NVOCCs to be more flexible and more responsive to their shippers, and will promote competition and commerce by eliminating substantial regulatory costs to NVOCCs, a savings that could be passed on to their customers. A number of commenters argued that the ability to enter into NRAs would allow them to quickly adjust service offerings and rates due to rapidly changing rates and surcharges imposed by ocean common carriers. Most commenters opined that the proposed rule would not result in a substantial reduction in competition or be detrimental to commerce and, in fact, would increase competition and promote commerce by making it easier and more efficient for NVOCCs to quote rates and to devote their resources to serving their customers. The NCBFAA argued that the issuance of the exemption for NVOCCs would increase, not decrease, competition in the NVOCC industry, and would not be detrimental to commerce, but would instead increase NVOCC efficiency, substantially reduce unnecessary costs, save jobs, permit NVOCCs to expend scarce resources in positive ways and allow NVOCC's to reduce rates for their shippers. Conversely, several commenters opined that the NPR did not meet these standards and was therefore beyond the Commission's current statutory authority.

The Commission issued the NPR pursuant to its authority under section 16 of the Shipping Act, which allows the Commission to exempt future activity from the requirements of the Shipping Act if the Commission finds that the exemption will not result in a substantial reduction in competition or be detrimental to commerce. 46 U.S.C. 40103. The Commission may attach conditions to such an exemption and may, by order, revoke an exemption. The Commission has granted exemptions in the past. For example, in 2004, the Commission used its authority under Section 16 to exempt NVOCCs who entered into negotiated service arrangements (NSAs) from the Shipping Act's tariff publication requirements.. The Commission has also denied such requests for exemption in the past.[4]

The Commission, as previously stated, is authorized to grant an exemption under Section 16 when it finds that the exemption will not result in a substantial reduction in competition and, separately, will not be detrimental to commerce. The relevant competitive considerations in determining whether to grant the exemption and allow licensed NVOCCs to enter into NRAs were: competition among NVOCCs; competition between NVOCCs and VOCCs; competition among VOCCs; and competition among shippers.

With regard to competition among NVOCCs, the Commission's records show that as of February 10, 2011, there were 3,368 NVOCCs licensed in the United States and 1,125 foreign unlicensed NVOCCs, indicating that customers can choose among a wide array of competing service providers. Additionally, allowing licensed NVOCCs the ability to opt out of the tariff rate publishing requirements of the Shipping Act could reduce entry costs for additional potential competitors in the NVOCC market, thereby resulting in more service providers and even greater competition. The Commission believes that allowing licensed NVOCCs to opt out of the requirement to publish tariff rates will enhance competition, rather than result in a substantial reduction in competition among licensed NVOCCs.

One commenter voiced concerns that granting the exemption will put VOCCs at a competitive disadvantage to NVOCCs as not all cargo moves under VOCC service contracts. That lone commenter is not a transportation provider, either as an NVOCC or a VOCC. Such issues were not raised by any VOCC. Some commenters have argued that NVOCCs and VOCCs do not compete against each other, as NVOCCs tend to service small-to-medium sized shippers and VOCCs tend to serve larger customers that sign service contracts. The record demonstrated, however, that many shippers use both NVOCCs and VOCCs at one time or another, thereby creating a competitive market.

The Joint Commenters, citing generally accepted industry statistics, noted that since the implementation of the Ocean Shipping Reform Act of 1998 (OSRA), over 90% of shippers' dealings with ocean common carriers have been in the form of confidential service contracts, rather than through tariff rates. Thus, VOCCs would appear to have had a statutory competitive advantage over NVOCCs, an advantage that will be somewhat reduced by this rule. As a result, NVOCCs will likely become more competitive with VOCCs.

Providing NVOCCs the ability to opt out of tariff rate publishing is highly unlikely to reduce competition among VOCCs. All NVOCC cargo must eventually move with a VOCC which, in turn, competes with other VOCCs for NVOCC cargo. If NVOCCs were able to somehow increase their cargo share due to their ability to opt out of rate tariff publishing, then those VOCCs who are more reliant on NVOCC cargo could conceivably capture more cargo from VOCCs that do not rely as much on NVOCC cargo. This, however, is in the Commission's view extremely speculative and, if such a scenario actually came about, we believe that it would be more likely to lead to changed business models by affected VOCCs and ultimately lead to increased competition overall. Thus, the Commission finds that granting the exemption would not result in a substantial reduction in competition among VOCCs.

Finally, many commenters asserted that their customers do not inquire as to published tariff rates, making such published rates effectively useless. Other commenters stated that their customers consult with multiple carriers directly, by e-mail or phone, in search

Services, Inc.; Laurie Zack-Olson; Dart Maritime Service, Inc.; Distribution Publications, Inc.; and the Kaslea Corporation d/b/a U.S. Traffic Service.

[3] Oral comments were made by from the following individuals: Edward D. Greenberg, Counsel for National Customs Brokers & Forwarders Association of America, Inc.; Paulette Kolba, Vice President of Ocean Compliance, Panalpina, Inc. as agent for Pantainer Ltd.; Robert J. Schott, President, SEASCHOTT, Division of AIRSCHOTT, Inc.; Robert A. Voltmann, President & CEO, Transportation Intermediaries Association; Neil Barni, President, CargoSphere; James E. Devine, President, Distribution Publications, Inc.; Stan Levy, President, Stan Levy Consulting; Gerard P. Wardell, President, and Laurie A. Zack-Olson, Vice President of Tariff Operations, RateWave Tariff Services, Inc.

[4] *See Motor Vehicle Manufacturers Association of the United States, Inc. and Wallenius Lines, N.A.—Joint Application for exemption from certain requirements of the Shipping Act of 1984 for certain limited shipments of passenger vehicles,* Petition, 26 S.R.R. 1269 (1994) (Commission denied a petition for exemption based on the pre-Ocean Shipping Reform Act version of Section 16 of the Shipping Act of 1984).

of the best quote and do not consult published tariffs. Several commenters stated that their shipper customers have never used a published tariff to review the marketability of an ocean freight rate.[5] Accordingly, the record demonstrates that shippers, for the most part, do not presently use published NVOCC tariffs for price information. Exempting such publication requirements, therefore, would have little effect on competition and, certainly, would not have a substantial impact. The Commission also notes that since the advent of confidential service contracts offered by VOCCs and, to some extent, NSAs offered by NVOCCs, it appears that pricing competition has increased rather than decreased. For these reasons, the Commission does not believe that allowing NVOCCs to opt out of the requirement to publish tariff rates will result in a substantial reduction in competition among shippers.

The Commission's authority under section 16 to grant exemptions from the statutory requirements of the Shipping Act, in whole or in part, requires the Commission to find not only that the exemption will not result in a substantial reduction in competition, but also that the exemption will not "be detrimental to commerce."[6] Ensuring that any exemption granted by the Commission is not detrimental to U.S. commerce is of particular importance at this time, considering the goal of the Administration's National Export Initiative to double U.S. exports over the next five years.[7]

Initially, it is significant that no shipper or carrier—NVOCC or VOCC—has appeared in this proceeding to object to granting the exemption or to allege economic harm resulting from providing NVOCCs the option of entering into NRAs,[8] a matter of significance in previous exemption cases. *See, Petition for Exemption from Tariff Filing Requirements Previously Granted, etc.,* 22 S.R.R. 1040, 1043 (1984); *Tariff Filing Notice Periods—Exemptions,* 24 S.R.R. 1604, 1605–06 (1989). Indeed, the NIT League, a large organization of shippers in the United States, has submitted comments in support of the grant of the exemption.

Moreover, the Commission has already concluded in this proceeding that authorizing licensed NVOCCs to enter into NRAs, subject to the conditions imposed, will reduce NVOCC operating costs and increase competition in the U.S. trades. Consequently, the Commission believes that allowing NRAs as proposed will result in a benefit to commerce. Accordingly, after reviewing all of the comments received, and in light of the relief sought and the conditions proposed in the NPR, the Commission finds that permitting licensed NVOCCs the option of operating under NRAs would not be detrimental to commerce.

Numerous commenters argued that because shippers do not access NVOCC tariffs, the maintenance of such tariffs serves no purpose and imposes additional costs on NVOCCs. The Joint Commenters argued that the exemption, as proposed, will allow NVOCCs to eliminate unnecessary costs. In contrast, several commenters questioned whether any cost saving experienced by NVOCCs would be passed on to shippers and whether there will be a net gain in jobs since jobs could be lost as the function of coordinating rate filings and submitting them to a tariff publisher will no longer exist. However, with a highly competitive industry consisting of more than 3,300 licensed NVOCCs competing for cargo, the Commission believes it is likely any cost savings realized through use of NRAs will be passed through to shippers in the form of more competitive rates. Residual savings to NVOCCs, as well as savings from lower rates to shippers, will provide funds for reinvestment and growing their respective businesses. Accordingly, providing this exemption would likely result in economic growth that would ultimately increase jobs.

Notwithstanding the ability of NVOCCs to enter into NSAs, a number of commenters expressed the view that there remained a need for NRAs that would exempt NVOCCs from tariff rate publication. One NVOCC commented that while some shippers may wish to work under a contract/NSA basis and some NVOCCs may wish to issue an NSA to obtain a volume commitment, most small-to-medium enterprises work on a quotation basis, often for a variety of services, and these companies do not want or need to engage in a formal contract process. Although several commenters suggested the Commission revisit NSAs and their relatively infrequent usage by NVOCCs, the Commission does not believe it is necessary at this time to initiate such a proceeding, as NSAs were implemented to give NVOCCs and their customers additional flexibility to structure their shipping transactions and their usage is voluntary. NVOCCs' lack of widespread NSA usage does not bear on the question of whether the Commission should grant the instant exemption, except that it does tend to corroborate a point argued by supporters of the exemption—that NRAs are necessary because the business models of many NVOCCs are not conducive to using NSAs.

Several commenters questioned whether NVOCCS entering into NRAs would continue to be common carriers at all. The answer is clearly yes. Entering into an NRA with a shipper, as opposed to providing service at tariff rates, would not change the common carrier status of an NVOCC.[9] The publishing of a tariff is not what characterizes an entity as a common carrier, and NVOCCs would still be required to publish a rules tariff.[10] Rather, the existence of a common carrier triggers the requirement to publish a tariff.

As discussed by the TIA, common carriage existed from 1916 to 1961 under the Shipping Act of 1916 without a statutory requirement that common carriers file or publish tariffs. Congress added a filing requirement in 1961 at the time dual rate loyalty agreements were authorized for conferences and carriers. The tariff provision was intended to protect shippers against sudden and unannounced rate increases. H. Rep. No. 498, 87th Cong., 1st Sess. at 2–3 (1961); S. Rep. No. 860, 87th Cong., 1st Sess. at 10–19 (1961). Congress changed the filing requirement to a publication requirement in 1998 with the passage of the OSRA. The ability of an NVOCC to enter into NRAs with its shipper customers in lieu of

[5] Several commenters suggested that the Commission initiate a proceeding to review and reform its tariff regulations for NVOCCs and VOCCs. The Commission does not believe such action alone would provide benefits to NVOCCs or their customers that are as timely or significant as this final rule.

[6] Section 16, 46 U.S.C. 40103.

[7] *See* Executive Order No. 13534, 75 FR 37756 (March 10, 2010).

[8] Objections by commenters to certain of the conditions imposed on NRAs in the NPR are discussed, *infra.*

[9] Indeed, VOCCs are ocean common carriers even when most of their business is done under service contracts.

[10] The Shipping Act defines a common carrier as a person who holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation; assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a foreign port. 46 U.S.C. 40102(6). Similarly, Black's Law Dictionary defines a common carrier as a commercial enterprise that holds itself out to the public as offering to transport freight or passengers for a fee. Black's Law Dictionary (8th ed. 2004). A common carrier is "bound to take all goods of the kind which he usually carries, unless his conveyance is full, or the goods be specially dangerous; but may charge different rates to different customers." Thomas E. Holland, *The Elements of Jurisprudence* 299 (13th ed. 1924).

moving cargo under a published tariff rate, and to assess different rates to different customers, does not disqualify an NVOCC as a common carrier. The responsibilities associated with common carriage remain and NVOCCs entering into NRAs continue to be subject to the applicable requirements and strictures of the Shipping Act, including oversight by the Commission. For example, NVOCCs will continue to be subject to requirements that they establish and observe "just and reasonable regulations and practices," 46 U.S.C. 41102(c), and prohibitions against false billing, false classification, false weighing or measurement, retaliating against shippers, engaging in unfair practices, and unreasonably refusing to deal or negotiate, 46 U.S.C. 41104(1), (3), (4), and (10).

The Commission recognizes the rapidly changing nature of the current shipping environment and believes that the ability of NVOCCs to enter into NRAs may increase competition and promote commerce by allowing NVOCCs to better serve their shipper customers. Based on the comments received and the Commission's experience, it appears that a vast majority of shippers obtain information regarding rates directly from NVOCCs without consulting published tariffs. It also appears that the systems used by NVOCCs to generate rate quotations are duplicated by those necessary to comply with tariff publishing requirements and the continuing requirement to publish rate tariffs may result in unnecessary costs to NVOCCs and their shipper customers. The decision to enter into an NRA rests with each shipper and NVOCC and is purely voluntary. Those licensed NVOCCs who find it more advantageous to use published tariff rates for some or all of their business may continue to do so, while those licensed NVOCCs and shippers who believe it will be more advantageous to enter into negotiated rate arrangements may choose to do so, within the requirements of the NRA regulations.

Allowing licensed NVOCCs to enter into NRAs in lieu of publishing tariff rates will not result in substantial reduction in competition among NVOCCs, between NVOCCs and VOCCs, among VOCCs, or among shippers. The Commission has also found that use of NRAs by licensed NVOCCs will not be detrimental to commerce. It is, therefore, within the authority of the Commission to permit licensed NVOCCs to enter into NRAs with their customers subject to the terms and conditions set forth in this regulation.

III. The Scope of an NRA

The Commission received a large number of comments and questions concerning the scope of an NRA.

a. Cargo Quantity

Commenters questioned the meaning of "cargo quantity" in the definition of rate,[11] specifically whether a single NRA could cover more than one shipment. Pursuant to Proposed Section 532.5(d), an NRA must clearly specify the rate and to which shipment[12] or shipments such rate will apply. Therefore, the term "cargo quantity" contemplates that an NRA may cover more than one shipment so long as all shipments are specified in the NRA.

b. Election To Use Exemption

A number of commenters questioned whether an NVOCC that elects to use NRAs may also move cargo pursuant to tariff rates. Under the final rule, NVOCCs are not required to choose to move all of their cargo under either NRAs or tariff rates. Eligible NVOCCs may choose to use NRAs on whatever basis best suits the market they serve. In order to ensure clarity as to whether an NVOCC is moving cargo under either an NRA or a tariff rate for a particular cargo quantity, Proposed Section 532.6(a)(1) has been modified to include a requirement that an NVOCC moving cargo pursuant to an NRA for a particular cargo quantity (either shipment or shipments), must place a prominent notice to that effect on its bills of lading or equivalent documents for that cargo quantity, in addition to the general notice in its rules tariff and its FMC–1 filed with the Commission. All licensed NVOCCs will need to access the Commission's FMC–1 form in order to make an initial choice[13] among (1) Moving all cargo pursuant to tariff rates; (2) moving all cargo pursuant to NRAs; or (3) moving cargo either via tariff rates or via NRAs. The Commission intends to modify the FMC–1 form to allow NVOCCs to notify the Commission of their intentions in advance of the effective date of the Final Rule and will make an announcement via its Web site when the ability to do so is available.

c. Rate: Base and Surcharge

There were also numerous comments filed regarding the meaning of "rate" in an NRA and its relationship to surcharges, accessorials, and rules tariffs. A number of commenters recommended including in the NRA all components of the transportation costs and argued NVOCCs should have the flexibility to structure NRAs from one extreme of merely containing base rates (with all other terms left to the rules tariff) to inclusion in the NRA of all terms. Commenters recommended that the NRA include information as to which surcharges are to be added to the rate, either in the NRA itself or by reference to the NVOCC's rules tariff. The NIT League opined that parties to an NRA should be able to negotiate an all-inclusive rate or a base rate with itemized surcharges, or should be required to specifically incorporate and identify which surcharges or accessorials from the rules tariff will apply. In a related comment, NYNJFFF&BA questioned how an NVOCC would implement general rate increases in the context of an NRA.

The Commission believes that NVOCCs and their shipper customers should have flexibility in structuring NRAs. As is the case with respect to tariff rates, the rate stated in an NRA may specify the inclusion of all charges (an "all-in" rate) or specify the inclusion of only certain accessorials or surcharges. Without specifying otherwise, the NRA would only replace the base ocean freight rate or published tariff rate. If the rate contained in an NRA is not an all-in rate, the NRA must specify which surcharges and accessorials from the rules tariff will apply. To the extent surcharges or accessorials published in the NVOCC's rules tariff will apply, the NRA must state that the amount of such surcharges and accessorials is fixed once the first shipment has been received by the NVOCC, until the last shipment is delivered. Rates stated in an NRA may not be increased via a GRI.

d. Terms of an NRA

The NCBFAA's petition and the Commission's proposed rule suggested an NRA accompanied by an exemption from the published tariff rate upon satisfaction of certain conditions. Neither proposed changes to rules tariffs, NSAs, or service contracts. One commenter on the proposed rule suggested that an NRA should be expanded to include such economic terms as credit and payment terms, late payment interest, freight collect or prepay, rate methodology, including

[11] The NPR defined "rate" for the purposes of NRAs as the "price stated for providing a specified level of transportation service for a stated cargo quantity". Proposed Section 532.3(b).

[12] A shipment, as defined in 46 CFR 520.2, is "all of the cargo carried under the terms of a single bill of lading."

[13] This initial choice may be modified by a licensed NVOCC at any time thereafter by further amendment of its FMC–1.

minimum quantities, time/volume arrangements, penalties or incentives, the methods for implementation of rate changes, or provisions for arbitration, forum selection for disputes and variance of per-package liability limits. Commission Staff raised concerns that expanding the scope of the NRA beyond rates could cause overlap and confusion between NRAs and NSAs, which must be filed with the Commission. At this time, the Commissioners hold differing views on the commenter's proposal and the concerns raised by Commission Staff. Accordingly, the Commission will move forward with the current rule as proposed (and as requested in the Petition), under which an NRA is an alternative to a published rate and does not include other economic terms. Nor can an NRA under this final rule contain a volume commitment, minimum quantity commitment, or a penalty provision for failure to meet a minimum quantity.[14] The Commission will commence proceedings to obtain and consider additional public comments on potential modifications to the final rule, including possible expansion of the terms that can be included in an NRA. The record in this proceeding will be incorporated into a new Commission proceeding.

e. Affiliates

Although treatment of affiliates was not a focus of the commenters, the Commission finds no reason to treat affiliates differently under NRAs than they are treated under NSAs. Accordingly, a definition of affiliate has been added to Proposed Section 532.3. With the mutual concurrence of the NRA parties, affiliates of the shipper are entitled to access the NRA rates, in which case, the names and addresses of eligible affiliates shall be identified in the NRA. Proposed Section 532.5(b) has been modified accordingly.

f. Household Goods and Other Limitations

The Commission received other comments regarding the scope of an NRA. One commenter, Mr. Levy, suggested that rates covering shipment of household goods and personal effects should not be exempted from tariff rate publication, citing the Surface Transportation Board's rules governing domestic household goods carriage which require the publication of tariffs. Without opining on the merits of this suggestion, in light of the Commission's ongoing Fact-Finding Investigation concerning household goods shipments,[15] the Commission has determined not to adopt the suggestion at this time as it may be more appropriate to revisit this issue after the Commission has the benefit of the Fact-Finding Officer's Final Report. Ms. Zack-Olson suggested that exemptions should be awarded on an individual basis based on certain criteria. The Commission notes that awarding the exemption on an NVOCC-by-NVOCC or customer-by-customer basis, based on specific criteria, would require an unnecessarily large expenditure of resources by both NVOCCs and the Commission and declines to adopt this suggestion.

IV. Extension of the Exemption to Foreign, Bonded, Unlicensed NVOCCS

The NPR proposed granting the exemption only to licensed NVOCCs, but requested comments on whether the exemption should be extended to foreign-based NVOCCs who are unlicensed, but bonded pursuant to 46 CFR 515.21(a)(3) (hereinafter "foreign unlicensed NVOCCs").[16] A large number of comments were received by the Commission in response to its query, with the strong majority of commenters supporting extension of the exemption to foreign unlicensed NVOCCs. Commenters mainly alleged adverse effects on competition and fears of discrimination or retaliation by regulators in other countries.

Commenters argued that foreign unlicensed NVOCCs will be disadvantaged because they will continue to be required to publish rates. The Commission recognizes there are, and would continue to be, under this final rule, differences between licensed and foreign unlicensed NVOCCs, not just in tariff publication costs, but also licensing costs and bonding costs. However, the Commission does not believe that the balance of such differences would be of such a magnitude that it would lead to a substantial reduction in competition.

Commenters also argued that, if the exemption is limited to licensed NVOCCs, discrimination against United States-based NVOCCs operating in foreign countries will occur. Commenters cited these specific examples of possible discrimination: the levying of special retaliatory customs tariffs or duties on American products; a new requirement that United States-based NVOCCs file tariffs; a requirement for United States-based NVOCCs to hold bonds in higher amounts than currently required; and a requirement that United States-based NVOCCs be licensed in foreign countries. Commission Staff, however, provided the Commissioners their view that these predictions of discrimination against United States-based NVOCCs operating in foreign countries are speculative, because the path to licensure is readily available to foreign-based NVOCCs to the same extent as United States-based entities. Foreign unlicensed NVOCCs may apply for and, if qualified, obtain an NVOCC license. Not only would this provide the benefit of NRAs but also reduced bond costs. Currently, fifty-five foreign-based NVOCCs hold FMC-issued licenses.

Commission Staff raised concerns that extending the exemption to foreign unlicensed NVOCCs could hamper their ability to protect the shipping public, as the exemption is predicated, among other things, on the prompt availability of records. The Commission Staff reports that the ability of the Commission and some private disputants[17] to obtain NRA documentation from foreign unlicensed NVOCCs is likely to be adversely impacted by the foreign situs and unlicensed status of such companies. Presently, both the Commission and private litigants are able to access a foreign unlicensed NVOCC's rates and rules tariffs. If such foreign unlicensed NVOCCs are permitted to use NRAs, the Commission would have less timely access to the rate information for those cargo quantities moving pursuant to NRAs. The Commission could be reduced to obtaining such information only with the cooperation of the foreign unlicensed NVOCC or its customer, or through a Commission issued subpoena or order,[18] and those private parties without their own copies may only be

[14] An NRA may contain a maximum quantity limit in the case of an NRA covering multiple shipments.

[15] *See* Fact Finding Investigation No. 27, Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades, Order issued June 23, 2010.

[16] The Commission's Bureau of Licensing and Certification's records, as of February 10, 2011, show a total of 5,576 entities operating in the U.S. trade as ocean transportation intermediaries: 1,083 licensed freight forwarders, 1,724 licensed NVOCCs, 1,589 entities licensed as both freight forwarders and NVOCCs, 1,125 foreign unlicensed NVOCCs and 55 licensed foreign-based NVOCCs operating in the U.S. trade.

[17] In a typical dispute between a shipper and a foreign unlicensed NVOCC, the shipper is likely to have its own copy of the NRA documentation that would be at issue. Commission Staff reports that some disputes involving foreign unlicensed NVOCCs, however, can involve VOCCs, freight consignees, freight forwarders, notify parties, and other affected parties who may be listed on a bill of lading for a shipment, but who may not have their own copy of NRA documentation.

[18] The issuance of a subpoena presupposes an active Commission investigation into violations of the Shipping Act. *See* 46 U.S.C. 41303.

able to obtain such information through the discovery process.[19]

Commission Staff raised several other concerns about extending this exemption to foreign unlicensed NVOCCs in the absence of published tariff rates. For foreign unlicensed NVOCCs, there is no application and approval process as there is for United States-based NVOCCs. The licensing process for United States-based companies includes a detailed review of the experience and character of the application's Qualified Individual (QI) and the character, not only of the QI, but also of the major officers and shareholders. The QI must have a minimum of three years of qualifying NVOCC experience as verified by previous employers and personal references with knowledge of the QI's qualifications, who are interviewed by telephone or via e-mail by the Commission's Bureau of Certification and Licensing (BCL). BCL's review of applicants includes a thorough vetting of the Commission's complaint and enforcement records systems as well as commercial databases to analyze the applicant's financial background, including unsatisfied liens and judgments and any criminal history. Any information not consistent with that provided by the applicant is investigated and may result in denial of the application.

Accordingly, when the Commission approves a license for a United States-based applicant, it is acting upon substantive, verified information under the experience and character standards of Section 19 of the Shipping Act. By contrast, a foreign unlicensed NVOCC is not required to have a QI or anyone in its employ who has any experience shipping in the United States trades. Similarly, foreign unlicensed NVOCCs are not required to have the character necessary to provide NVOCC services to United States importers and exporters, as United States based companies do. The Commission knows little more than the name and address of such persons and the identity of their agent for service of process in the United States.

Commenters suggested various methods to address this concern, including requiring all participating NVOCCs to agree in writing to produce NRA records as reasonably requested by the Bureau of Enforcement; requiring that foreign unlicensed NVOCCs maintain their NRA files at the offices of their U.S. agents or a third party Web site; or requiring that all foreign based NVOCCs place a statement in their rules tariff regarding the location of records and contact information. Another commenter suggested that the exemption be extended to unlicensed NVOCCs that are affiliates with licensed NVOCCs in good standing. Alternatively, one commenter suggested that the tariff rate exemption be limited to exports from the United States.

These suggestions did not fully address the concerns raised by Commission Staff at this time. Congress, in providing for foreign-based companies to operate as NVOCCs, without being required to be licensed or vetted, recognized possible regulatory differences between United States and foreign-based NVOCCs. Congress directed the Commission to take into account that foreign-based unlicensed companies had not been reviewed as to experience and character and "to consider the difference in potential for claims against the bonds between licensed and unlicensed intermediaries when developing bond requirements." Congress recognized the "diversity of activities" conducted by ocean transportation intermediaries and directed the Commission "to establish a range of licensing and financial responsibility requirements commensurate with the scope of activities conducted by different ocean transportation intermediaries and the past fitness of ocean transportation intermediaries in the performance of intermediary services." S. R. Rep. No. 105–61, at 30–32 (1997). Accordingly, Congress recognized that not all NVOCCs were to be treated equally from a regulatory perspective and that the Commission was to take into account those factors necessary to ensure the public is protected.

Commission Staff has raised further concerns over its ability to protect the shipping public with respect to possible exempted operations of foreign unlicensed NVOCCs. The proposed rule provides that NRAs and associated records are subject to inspection and reproduction requests under 46 CFR 515.31(g). However that provision only applies to a "licensee."

Absent that limitation, obtaining records located overseas can be difficult and may involve considerable delay. *The Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters*[20] (Convention) provides procedures for obtaining evidence from entities in certain countries, but those procedures are time consuming and uncertain, at best. Moreover, while the United States is a signatory to the Convention, many of our trading partners are not.[21] And, even among those nations party to the Convention, most have executed a "declaration" that they will not honor requests to obtain pre-trial discovery of documentary evidence.[22] The Commission Staff has raised concerns that Commission requests for documentation could be subject to delay due to the requirements of the Convention.

Schenkerocean Limited cited the requirement that foreign unlicensed NVOCCs may only provide ocean transportation intermediary services in the United States through a licensed ocean transportation intermediary as support for the proposition that the Commission would have regulatory access to the bonds of both entities. If the licensed OTI in the United States acts as an agent, however, it is likely

[19] The Commission's decisions (both before and after the passage of OSRA with its requirement that United States-based NVOCCs be licensed), have noted repeatedly "the fact that foreign-based NVOCCs often ignore Commission proceedings and orders to furnish answers to BOE's discovery requests." *Ever Freight Int'l. Ltd. et al.,* 28 S.R.R. 329, 335 (1998); *see also Refrigerated Container Carriers Pty. Ltd.,* 28 Continued * * * S.R.R. 799 (1999) ("BOE has had to deal with the practical problem of obtaining evidence * * * when respondents are located overseas, do not cooperate, and, indeed, ignore Commission proceedings altogether."); *Kin Bridge Express Inc. and Kin Bridge Express, (U.S.A.) Inc.,* 28 S.R.R. 971 (1999). In *Universal Logistics Forwarding Co., Ltd.,* 29 S.R.R. 36, 37 (2001), a foreign NVOCC refused to respond to discovery requests or the Administrative Law Judge's discovery order. The NVOCC was assessed civil penalties of $1,237,500. 29 S.R.R. 474, 475 (2002). In *Transglobal Forwarding Co., Ltd,* 29 S.R.R. 815, 821 (2002), a foreign NVOCC did not respond to Bureau of Enforcement discovery requests, and then failed to respond fully to an Administrative Law Judge order. The NVOCC was assessed civil penalties of $1,440,000. In *Hudson Shipping (Hong Kong), Ltd. d/b/a Hudson Express Lines,* 29 S.R.R. 702 (2002), a Hong Kong-based NVOCC refused to respond to Bureau of Enforcement discovery requests or an Administrative Law Judge order. Ultimately, the NVOCC was assessed $7.9 million in civil penalties.

[20] Hague Conference on Private International Law, Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters, (Entered into force October 7, 1972), U.N.T.S. 37/1976.

[21] For example, neither Japan, Taiwan nor Brazil is a signatory to the Convention.

[22] Most countries who are party to the Convention (with the exception of the Czech Republic, Israel, the Slovak Republic and the United States), have executed a declaration under Article 23 of the Convention that they will not execute letters of request issued for the purpose of obtaining pre-trial discovery of documents. These declarations are meant to prevent general requests whereby one party seeks to find out what documents are in the possession of another party. The countries who have executed some form of declaration under Article 23 include Argentina, Australia, Bulgaria, China, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Italy, Lithuania, Luxembourg, Mexico, Monaco, Continued * * * Netherlands, Norway, Poland, Portugal, Romania, South Africa, Seychelles, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, and Venezuela. Hague Conference on Private International Law (2011) available at *http://www.hcch.net/index_en.php?act=conventions.status &cid=82.*

only the bond of the foreign NVOCC would be available to satisfy any civil penalty or reparation awards, not the bond of the United States-based company acting in an agency capacity.

Commission Staff has raised concerns that the difficulties facing the Commission in compelling production of pertinent documentation and, what may be the inability of a private litigant to obtain documentation, could reduce the Commission's ability to protect the shipping public. At this time, Commissioners hold differing views on the concerns the Staff has raised, and on the relevance and weight those concerns should be given in the Commission's decision whether or not to extend the exemption to foreign unlicensed NVOCCs. Accordingly, the Commission will move forward with the current rule as proposed for licensed NVOCCs, but as noted above, will commence proceedings to obtain and consider additional public comment on potential modifications to the final rule, including possible extension of the exemption to include foreign unlicensed NVOCCs. The record in this proceeding will be incorporated into the new Commission proceeding.

V. Memorialization of NRAs and Recordkeeping Requirements

Several commenters asked for clarification as to whether an NRA could consist of an electronic communication such as an e-mail or a facsimile with one commenter arguing that both methods of communication are internationally acceptable. It is the Commission's view that both may be satisfactory forms of NRA memorialization.[23] UPS objected to the requirement of Proposed Section 532.7(a) to retain associated records, and argued the regulation should require only the retention of those specific documents constituting the contract between the NVOCC and shipper and any document necessary to interpret and enforce the contract. The Commission notes that the wording in Proposed Section 532.7(a) is similar to that contained in the recordkeeping requirements for NSAs at 46 CFR 530.15(a) and believes the requirement that NVOCCs maintain original NRAs and associated records is appropriate. RateWave Tariff Services, Inc. sought guidance on what the Commission means in Proposed Section 532.7(a) by "associated records," and recommended that the Commission provide a list of possible documents. Given the variety of documents which may be utilized by NVOCCs, it is impossible to provide a comprehensive list of documents and therefore, the Commission declines to do so.

UPS argued that the required retention period for documentation should be shortened to three years. The requirement to maintain documentation for five years is, however, consistent with the statute of limitations for violations of the Shipping Act found at 46 U.S.C. 41109(e). Therefore, the Commission believes it is necessary that documentation be available for five years. UPS also requested that the Commission clarify that the requirements of 46 CFR 515.33 do not apply to NRAs. That provision contains detailed requirements regarding the retention of financial data and shipment records by ocean freight forwarders. Since the requirements of 46 CFR 515.33 apply only to freight forwarders, they would not apply to any NVOCC.

Panalpina, Inc. recommended against a requirement for centralized record keeping and urged the Commission to model the NRA recordkeeping requirements on 46 CFR 515.33. Another commenter, Ms. Zack-Olson, argued that, for ease of access to documents by the Commission, the documents should be stored both in the shipping file and at a remote location such as a third-party Web site. Yet another commenter, Mr. Levy, also suggested that NRAs be filed with the Commission at no cost, arguing this would lead to better uniformity and access. The Commission declines to adopt these suggestions. Each NVOCC appears to be best able to determine the most suitable, efficient way for it to ensure compliance with the documentation, retention and access requirements of the Commission's regulations.

RateWave Tariff Services, Inc. requested that the Commission clarify when the five-year period for retaining NRAs and associated documents begins. CASA suggested the 5-year record keeping period be measured commencing from the date upon which the last shipment covered by an NRA is received by the NVOCC or its agent (including the originating carrier in the case of an NRA rate for through transportation). As discussed above, an NRA may cover a period of time and involve multiple shipments. In order to ensure availability of documentation, the Commission has determined that the 5-year record keeping period should commence from the completion date of performance of the NRA by an NVOCC, rather than the date when the initial shipment is received by the carrier or its agent. Proposed Section 532.7(a) is modified accordingly.

Mr. Levy recommended changing the wording of Proposed Section 532.7(b) to be consistent with the NSA regulations at 46 CFR 531.12(a), which state that records must be readily available and usable to the Commission. The Commission has modified Proposed Section 532.7(b) slightly in accord with this suggestion. Several commenters suggested that the Commission should specify that all NRA records be in English or contain a certified English translation.[24] While it may not be necessary to require that the documentation for all NRA shipments be in English, Proposed Section 532.7(b) is modified to include a requirement that any records produced in response to a Commission request must be in English or accompanied by a certified English translation.

Distribution Publications, Inc. asserted that, under Proposed Section 532.2 (Scope and Applicability), NVOCCs who satisfy the requirements of the proposed regulations are exempt from 46 CFR 520.6. The Commission notes that Proposed Section 532.2 exempts NVOCCs solely from the requirements of 46 CFR 520.6(e), which relates to rates, and not its other requirements.[25] Dart Maritime Services, Inc. expressed a concern that data may cease to become available if the NPR is adopted without the continued requirements of 46 CFR 520.10(a). The Commission notes that an NVOCC's rules tariff will continue to be subject to the history requirements of 46 CFR 520.10(a) and NRAs will be subject to these requirements. Therefore, all documentation should be covered and consistent as to recordkeeping.

RateWave Tariff Services, Inc. expressed concerns with the burden if

[23] For example, the International Chamber of Commerce *ICC eTerms 2004* provides a framework so that parties can agree to contract electronically. International Chamber of Commerce (2011), available at *http://iccwbo.org/policy/law/id3668/index.html*. Similarly, the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP), a supplement to the Uniform Customs and Practice for Documentary Credits (2007 Revision ICC Publication No. 600) (UCP) exists to accommodate presentation of electronic records alone or in combination with paper documents. The E-Sign Act of 2000, with some exceptions, prohibits the denial of legal effect, validity, or enforcement of a document solely because it is in electronic form. 15 U.S.C. 7001 *et seq.*

[24] This suggestion is similar to the requirement in 46 CFR 502.7 that documents written in a foreign language other than English, filed with the Commission or offered in evidence in any proceeding before the Commission, be filed or offered in the language in which it is written and shall be accompanied by an English translation duly verified under oath to be an accurate translation.

[25] The other requirements of 46 CFR 520.6 generally address search capabilities and retriever selections.

an NVOCC had to recreate an NRA every time anything in the original NRA changes. The Commission notes that an NRA, by definition, is a written and binding arrangement between a shipper and an NVOCC to provide specific transportation service for a stated cargo quantity from origin to destination and therefore, an NVOCC must enter into a new NRA for each specific transportation service and cargo quantity. An NVOCC may use a form agreement for an NRA and, in as much as an NRA may not contain other contractual terms, the requirement to enter into a new NRA for each stated cargo quantity should not be a significant burden.

VI. Access to Rules Tariffs

The NPR provided licensed NVOCCs offering NRAs the option of providing their rules tariff free of charge to the public or providing each prospective shipper with a copy of all the applicable terms set forth in its rules tariff. Upon further review and consideration of the comments received, which generally did not object to providing access to rules tariffs free of charge, Proposed Section 532.4 has been amended to require licensed NVOCCs, as a condition to offering NRAs, to provide their rules tariffs to the public free of charge. UPS expressed concerns that shippers moving cargo in the absence of a tariff rate could shop through an NVOCC's effective NRAs looking for the most advantageous rate. The rule only requires that access to an NVOCC's rules tariff be available to the public and does not require public access to an NVOCC's effective or proposed NRAs.

VII. Terms of an NRA

A number of commenters recommended that Proposed Section 532.5(d) be changed to allow modification of the rate in an NRA at any time, as long as it is clearly stated in writing that the party to whom the request was made agrees to the change. The commenters argued that what was important is that a shipper and consignee agree to the rate and the effective date. The Commission disagrees. While NRAs are defined as "written and binding" arrangements, they function more like tariff rates and, like tariff rates, they may not be amended by the parties once the subject cargo has been received. The Commission believes maintaining the integrity of NRA rates protects both the shipper and the NVOCC. Accordingly, the Commission declines to modify the rule to allow for amendment of an NRA after receipt of the cargo by the carrier or its agent. To address situations where an NRA may cover multiple "shipments," the word "initial" is added to Proposed Section 532.5(e) to clarify that an NRA may not be modified after the time the initial shipment in an NRA is received by the carrier or its agent. RateWave Tariff Services, Inc. questioned whether an NRA may be canceled, (for example, if an NVOCC bases its NRA on the service of a specific VOCC which then changes its service level). By definition, an NRA is a written and binding arrangement between a shipper and an eligible NVOCC and therefore, could only be canceled by operation of law or by agreement of both parties prior to receipt of the cargo.

Several commenters recommended allowing an NRA to have an effective date. The definition of rate contained in the rule is "a price stated for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, *on or after a stated date or within a defined time frame*." Proposed Section 532.3(b) (emphasis added). Accordingly, an NRA may have an effective date or cover a particular period of time.

Dart Maritime Services, Inc. questioned what methods or instruments will properly serve as acceptance by a shipper, given the use of generic e-mail addresses by NVOCC clients, and recommended that in order to have an "agreement" by both parties there must be some level of proof of identity from the authorizing party similar to that required in 46 CFR 531.6(b)(9). The Commission has modified Proposed Section 532.5 accordingly, requiring that an NRA contain the legal name and address of the parties and the names, title and addresses of the representatives of the parties agreeing to the NRA. RateWave Tariff Services, Inc. suggested that the Commission clarify that there is a requirement for a formal acceptance by the shipper before cargo begins moving under the NRA, noting that shippers often decide to use a rate quote before informing the NVOCC of their acceptance of the rate. This practice, they asserted, causes problems under current regulations and could also cause problems under the proposed regulation. While the Commission declines to specify in the rule what form the acceptance should take, as many processes can indicate acceptance, in order for a valid NRA to exist, Proposed Section 532.5(c) requires agreement by both shipper and NVOCC.

Dart Maritime Services, Inc. suggested that Proposed Section 532.5 be amended to include the filing requirements of 46 CFR 531.6(a) and selected requirements for NSA contents contained in 46 CFR 531.6(b) (46 CFR 531.6(b)(1), (2), (3), (6), (8), and (9)). Similarly, RateWave Tariff Services, Inc. provided an 11-point list of suggested items to require for inclusion in an NRA. The Commission has included in Section 532.5(a) the requirement in 46 CFR 531.6(b)(9) that the arrangement be in writing. The other requirements and suggestions are already included or adequately addressed in the rule.

Distribution Publications, Inc. contended that the exemptions in the Proposed Section 532.2 do not include 46 CFR 520.5, Standard Tariff Terminology or its Appendix A, and argued that these standards should also be used in NRAs. The Commission notes that the purpose of the use of Standard Tariff Terminology per 46 CFR 520.5 is to "facilitate retriever efficiency" which would not appear relevant for unfiled, unpublished NRAs.

Although not addressed by the commenters, the Commission wishes to make clear that it did not intend to preclude an eligible NVOCC from entering into an NRA with another NVOCC. Accordingly, the term "NRA shipper" has been added to Proposed Section 532.3—Definitions. An NRA shipper is defined as "a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act (46 U.S.C. 40102(16)), that accepts responsibility for payment of all applicable charges under the NRA." Additionally, the definition of NRA in Proposed Section 532.3(a) has been modified to read a written and binding arrangement between an *NRA* shipper and an eligible NVOCC and Proposed Section 532.5(c) is modified to require agreement by both the *NRA* shipper and the NVOCC (emphasis added). This definition is consistent with the Commission's NSA regulations at 46 CFR 531.2.

VIII. NRA Disputes, Dispute Resolution Services and Safe Harbor Provisions

A number of commenters addressed the question of NRA disputes and the Commission's question of what rate should apply in the event of a dispute. CV International opined that the principles of contract law currently manage the relationship between shippers and NVOCCs and the proposed rule appropriately adopts that system. Several commenters argued that, because the NRA is a mutually agreed upon rate tailored to the requirements of both parties, it should take precedence over a tariff rate. Commenters suggested

that the final rule should clarify that, in the event of a discrepancy between the terms set forth in the NRA and the NVOCC rules tariff, the terms of the NRA will govern.

The TIA and NCBFAA pointed out that Section 13(f) of the Act, now codified at 46 U.S.C. 41109(d), makes the "amount billed and agreed upon in writing" between the carrier and the shipper controlling, even if the tariff for whatever reason does not conform to that rate. Both argued that this section answers the question asked in the NPRM as to whether the lower rate should prevail if there is a conflict between the tariff rate and the NRA rate. The Commission agrees with the commenters that, in the event of a dispute, the NRA rate will apply. Also, as with tariffs, to the extent the language of an NVOCC-drafted NRA is found to be unclear, that language is to be interpreted in favor of the shipper.

With regard to disputes, commenters stated that most disputes are quickly resolved commercially between shipper and carrier, particularly when a long-term customer relationship is at stake, and disagreements under NRAs should be resolved like other commercial disputes, i.e., without the need for intervention by the Commission. Similarly, the NCBFAA did not believe there is a need to mandate that parties with NRA disputes bring them to the Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS), as most disputes are resolved quickly and it is possible that a dispute may not be a potential violation of the Act, leaving the Commission without jurisdiction. The NCBFAA also argued that while parties may elect to use the services of CADRS, it is more appropriate to leave the choice of forum to the parties. The TIA stated that, if a dispute is brought to the Commission because it involves an alleged violation of the Shipping Act, in accordance with Commission regulations which strongly encourage alternative dispute resolution (ADR) procedures, they would not object to continuing such a requirement for complaints involving NRAs.

The Commission concurs that the parties themselves are best able to resolve most disputes, quickly and without recourse to an outside party. Accordingly, the Commission does not impose, as some commenters appear to suggest, a requirement that all disputes be referred to CADRS. The Commission does note, however, that its current regulations, which allow disputes to be brought before the Commission at the discretion of the parties, and which encourage alternative dispute resolution, are equally applicable to NRAs. Some commenters, though, appear to misunderstand CADRS' role in dispute resolution. CADRS provides a variety of ADR services. Some of these services, such as mediation, are ideal in situations where parties have a longstanding, commercial relationship and it is in their interest to continue that relationship. The parties themselves, in consultation with CADRS, decide which process is best for their situation. Ultimately, the parties determine the terms of any resolution; CADRS merely assists them in arriving at agreement. CADRS' role is not limited to disputes involving possible violations of the Shipping Act. Rather, the full panoply of CADRS dispute resolution procedures, formal and informal, are available to assist the parties to resolve any dispute involving liner ocean transport, even when a Shipping Act violation is not involved.

The Commission requested comments as to which elements should be required to qualify the NRA for a "safe harbor" status that would afford a presumption that the corresponding shipment is not subject to the tariff rate publication requirement. In response, the NIT League stated they supported the incorporation of a "safe harbor" provision, noting that shippers may already be entitled to protection pursuant to 46 U.S.C. 41109(d), while acknowledging the possibility that the Commission could determine that an NRA is defective prior to the issuance of an invoice for a particular shipment. The TIA, on the other hand, argued it is unnecessary in their view to prescribe a "safe harbor" for the form and content of NRAs as NVOCCs need flexibility. In light of the comments, the Commission declines to incorporate a "safe harbor" provision in the final rule. The Commission intends that the parties should have flexibility in tailoring the NRA to their specific situation.

IX. Extending the Exemption to Sections 10(b)(4) and 10(b)(8), 46 U.S.C. 41104(4) and (8)

The Commission also sought public comment in the NPR as to whether the final rule should exempt NVOCCs entering into NRAs from the prohibitions contained in Sections 10(b)(4) and 10(b)(8). Section 10(b)(4), 46 U.S.C. 41104(4), prohibits a common carrier, for service pursuant to a tariff, from engaging in any unfair or unjustly discriminatory practice in the matter of rates or charges; cargo classifications; cargo space accommodations or other facilities, loading and landing of freight; or adjustment and settlement of claims. Section 10(b)(8), 46 U.S.C. 41104(8), prohibits a common carrier, for service pursuant to a tariff, from giving any undue or unreasonable preference or advantage or imposing any undue or unreasonable prejudice or disadvantage. Most commenters supported extending the exemption to both sections. As justification, some argued that the high level of competition between NVOCCs would make it difficult for them to discriminate and therefore these prohibitions were not necessary for NVOCCs entering into NRAs. Others argued that prohibiting NVOCCs from discriminating or providing preferences in NRAs would be inconsistent with the stated purpose of NRAs and contract-based shipping practices and NVOCCs entering into NRAs will by definition be discriminating.

As a preliminary matter, the Commission Staff point out that cargo moving pursuant to an NRA may properly be interpreted as service pursuant to a tariff; tariff rules will apply, as will the prohibitions contained in Sections 10(b)(4) and 10(b)(8). An NVOCC entering into an NRA is still a common carrier. As discussed above, an NRA is not a service contract or an NSA. An NRA merely replaces the requirement in the Commission's regulations that an NVOCC publish a tariff rate.

Commenters argue that, because an NVOCC may enter into NRAs with different shippers at different rates and will be discriminating, it needs to be exempt from Sections 10(b)(4) and 10(b)(8). Section 10(b)(4) does not prohibit an NVOCC from discriminating by entering into or offering an NRA with different rates to different shippers, but rather prohibits any *unfair or unjustly discriminatory practice* by a common carrier in the matter of rate or charges; cargo classifications; cargo space accommodations or other facilities, loading and landing of freight; or adjustment and settlement of claims. (emphasis added). The Commission Staff is concerned that these provisions apply to more matters than just rate level whereas only the requirement to publish the rate is relieved by this exemption. Similarly, Section 10(b)(8) does not prohibit *all* preferences or advantages but rather prohibits giving any *undue or unreasonable* preference or advantage or imposing any *undue or unreasonable* prejudice or disadvantage. (emphasis added). Neither of these prohibitions prevents an NVOCC from entering into an NRA with different shippers at different rates. The Commission Staff is concerned that, despite entering into an NRA, a shipper may still need the protections offered by the prohibitions contained in these two sections and, therefore, as common

carriers, NVOCCs will still be subject to the prohibitions contained in them. At this time, Commissioners hold differing views on the concerns the Staff raised, and on the relevance and weight those concerns should be given in the Commission's decision. Accordingly, the Commission will move forward with the current rule as proposed, which will not exempt NVOCCs entering into NRAs from the prohibitions contained in section 10(b)(4) and 10(b)(8). However, as noted above, the Commission will commence proceedings to obtain and consider additional comments on potential modifications to the final rule, including whether to exempt NVOCCs entering into NRAs from the prohibitions contained in section 10(b)(4) and 10(b)(8). The record in this proceeding will be incorporated into the new Commission proceeding.

X. Regulatory Flexibility Act

One commenter complained, with regard to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq,* that the Commission's explanation in the NPR was unclear as to whether small business entities meant importers and exporters, the companies who use NVOCCs or the NVOCCs themselves. The commenter further argued that the NPR's statement that the economic impact will be small, seems to contradict the NCBFAA's petition, which claimed that the regulatory cost is huge. The Regulatory Flexibility Act directs agencies to give particular attention to the potential impact of regulation on small businesses and other small entities and requires consideration of regulatory alternatives that are less burdensome to small entities. The Commission's comments on the Regulatory Flexibility Act in its NPR were directed to NVOCCs as the regulated entities affected by the rule. NVOCCs are free to choose whether or not to take advantage of this rulemaking. Therefore, the Commission concludes the economic impact of the rule will be minor and it will not have a significant economic impact on a substantial number of small entities (i.e. NVOCCs). To the extent there is substantial economic impact, it would improve the economic condition of NVOCCs.

VI. Statutory Reviews

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the Final Rule will not have a significant economic impact on a substantial number of small entities. Although NVOCCs as an industry include small entities, the Final Rule establishes an optional method for NVOCCs to carry cargo for their customers to be used at their discretion. The rule would pose no economic detriment to small business entities. Rather, it exempts NVOCCs from the otherwise applicable requirements of the Act when such entities comply with the rules set forth herein and will have a positive impact.

This regulatory action is not a "major rule" under 5 U.S.C. 804(2).

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3507, the Commission has submitted estimated burdens of collection of information authorized by this Final Rule to the Office of Management and Budget. The estimated annual burden for the estimated 3,242 annual respondents is $865,343.00. No comments were received on this estimate. The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0071.

List of Subjects

46 CFR Part 520

Common carrier, Freight, Intermodal transportation, Maritime carrier, Reporting and recordkeeping requirements.

46 CFR Part 532

Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries.

Accordingly, the Federal Maritime Commission amends 46 CFR part 520 and adds 46 CFR Part 532 as follows:

PART 520—CARRIER AUTOMATED TARIFFS

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

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101–40102, 40501–40503, 40701–40706, 41101–41109.

■ 2. In 520.13, add a new section (e) to read as follows:

§ 520.13 Exemptions and exceptions.

* * * * *

(e) NVOCC Negotiated Rate Arrangements. A licensed NVOCC that satisfies the requirements of part 532 of this chapter is exempt from the requirement in this part that it include rates in a tariff open to public inspection in an automated tariff system.

■ 3. Add part 532 to read as follows:

PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

Subpart A—General Provisions

Sec. 532.1 Purpose.
Sec. 532.2 Scope and applicability.
Sec. 532.3 Definitions.

Subpart B—Procedures Related to NVOCC Negotiated Rate Arrangements

Sec. 532.4 Duties of the NVOCC rules tariff.
Sec. 532.5 Requirements for NVOCC negotiated rate arrangements.
Sec. 532.6 Notices.

Subpart C—Recordkeeping Requirements

Sec. 532.7 Recordkeeping and audit.
Sec. 532.91 OMB control number assigned pursuant to the Paperwork Reduction Act.

Authority: 46 U.S.C. 40103.

Subpart A—General Provisions

§ 532.1 Purpose.

The purpose of this Part, pursuant to the Commission's statutory authority, is to exempt licensed and bonded non-vessel-operating common carriers (NVOCCs) from the tariff rate publication and adherence requirements of the Shipping Act of 1984, as enumerated herein.

§ 532.2 Scope and applicability.

This Part exempts NVOCCs duly licensed pursuant to 46 CFR 515.3; holding adequate proof of financial responsibility pursuant to 46 CFR 515.21; and meeting the conditions of 46 CFR 532.4 through 532.7; from the following requirements and prohibitions of the Shipping Act and the Commission's regulations:

(a) The requirement in 46 U.S.C. 40501(a)–(c) that the NVOCC include its rates in a tariff open to public inspection in an automated tariff system;

(b) 46 U.S.C. 40501(d);

(c) 46 U.S.C. 40501(e)

(d) 46 U.S.C. 40503;

(e) the prohibition in 46 U.S.C. 41104(2)(A);

(f) the Commission's corresponding regulation at 46 CFR 520.3(a) that the NVOCC include its rates in a tariff open for public inspection in an automated tariff system; and

(g) the Commission's corresponding regulations at 46 CFR 520.4(a)(4), 520.4(f), 520.6(e), 520.7(c), (d), 520.8(a), 520.12, and 520.14. Any NVOCC failing to maintain its bond or license as set forth above, or who has had its tariff suspended by the Commission, shall not be eligible to invoke this exemption.

§ 532.3 Definitions.

When used in this part,

(a) "NVOCC Negotiated Rate Arrangement" or "NRA" means a written and binding arrangement between an NRA shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after receipt of the cargo by the carrier or its agent (or the originating carrier in the case of through transportation).

(b) "Rate" means a price stated for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated date or within a defined time frame.

(c) "Rules tariff" means a tariff or the portion of a tariff, as defined by 46 CFR 520.2, containing the terms and conditions governing the charges, classifications, rules, regulations and practices of an NVOCC, but does not include a rate.

(d) "NRA shipper" means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act (46 U.S.C. 40102(16)), that accepts responsibility for payment of all applicable charges under the NRA.

(e) "Affiliate" means two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with or otherwise related to each other through common stock ownership or common directors or officers.

Subpart B—Procedures Related to NVOCC Negotiated Rate Arrangements

§ 532.4 NVOCC rules tariff.

Before entering into NRAs under this Part, an NVOCC must provide electronic access to its rules tariffs to the public free of charge.

§ 532.5 Requirements for NVOCC negotiated rate arrangements.

In order to qualify for the exemptions to the general rate publication requirement as set forth in section 532.2, an NRA must:

(a) Be in writing;

(b) contain the legal name and address of the parties and any affiliates; and contain the names, title and addresses of the representatives of the parties agreeing to the NRA;

(c) be agreed to by both NRA shipper and NVOCC, prior to the date on which the cargo is received by the common carrier or its agent (including originating carriers in the case of through transportation);

(d) clearly specify the rate and the shipment or shipments to which such rate will apply; and

(e) may not be modified after the time the initial shipment is received by the carrier or its agent (including originating carriers in the case of through transportation).

§ 532.6 Notices.

(a) An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and to the public by:

(1) A prominent notice in its rules tariff and bills of lading or equivalent shipping documents; and

(2) By so indicating on its Form FMC–1 on file with the Commission.

Subpart C—Recordkeeping

§ 532.7 Recordkeeping and audit.

(a) An NVOCC invoking an exemption pursuant to this part must maintain original NRAs and all associated records, including written communications, in an organized, readily accessible or retrievable manner for 5 years from the completion date of performance of the NRA by an NVOCC, in a format easily produced to the Commission.

(b) NRAs and all associated records and written communications are subject to inspection and reproduction requests under section 515.31(g) of this chapter. An NVOCC shall produce the requested NRAs and associated records, including written communications, promptly in response to a Commission request. All records produced must be in English or be accompanied by a certified English translation.

(c) Failure to keep or timely produce original NRAs and associated records and written communications will disqualify an NVOCC from the operation of the exemption provided pursuant to this part, regardless of whether it has been invoked by notice as set forth above, and may result in a Commission finding of a violation of 46 U.S.C. 41104(1), 41104(2)(A) or other acts prohibited by the Shipping Act.

§ 532.91 OMB control number issued pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0071.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–4599 Filed 3–1–11; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 207

RIN 0750–AG45

Defense Federal Acquisition Regulation Supplement; Preservation of Tooling for Major Defense Acquisition Programs (DFARS Case 2008–D042)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 815 of the National Defense Authorization Act for Fiscal Year 2009. Section 815 addresses the preservation of tooling for major defense acquisition programs.

DATES: *Effective Date:* March 2, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

Section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) impacts the acquisition planning process. Section 815, entitled "Preservation of Tooling for Major Defense Acquisition Programs," mandates the publication of guidance requiring the "preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item associated with such a program." The statute states that the guidance must—

- Require that the milestone decision authority (MDA) approve a plan for the preservation and storage of "such tooling prior to Milestone C approval;"
- Require the MDA to periodically review the plan to ensure that it remains adequate and in the best interest of DoD; and
- Provide a mechanism for the Secretary of Defense to waive the requirement under certain circumstances.

DoD published a proposed rule in the **Federal Register** (75 FR 25159) on May

7, 2010, to address the new statutory requirements. The rule proposed to add a new paragraph (S–73) to DFARS 207.106, Additional requirements for major systems. The topic of subpart 207.1 is Acquisition Plans.

II. Discussion and Analysis

The public comment period closed July 6, 2010. Four respondents submitted comments on six issues. A discussion of the comments is provided in the following paragraphs.

A. Rule May Not Fully Implement the Statute

Comment: A respondent generally agreed with the proposed rule, but noted that it implemented only two of the three requirements of section 815, omitting the key language requiring the "milestone decision authority (to) periodically review the plan required by (section 815(a)(1)) prior to the end of the service life of the end item, to ensure that the preservation and storage of such tooling remains adequate and in the best interest of the Department of Defense." The respondent stated that the periodic review requirement should be included in the proposed rule.

In addition, the respondent believes that the proposed rule should require the contractor to develop adequate procedures for the preservation and storage of the special tooling and to document compliance.

Response: No changes have been made to the rule in response to these comments for several reasons. First, the DFARS has not been used to outline MDA determinations in the past. The appropriate location for requirements being placed on MDAs is in the DoD 5000 series regulations and/or directives from senior DoD leaders. Further, the requirement at section 815(a)(2) has been implemented in a Deputy Secretary of Defense memorandum dated August 3, 2009, entitled "Preservation and Storage of Tooling for Major Defense Acquisition Programs (MDAPs)." The preservation policy, according to the memorandum, will be included in the next update to DoDI 5000.02.

With regard to the second part of the respondent's comment, DoD notes that the clause at FAR 52.245–1, Government Property, requires the contractor to "have a system to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession." (*See* FAR 52.245–1(b).)

B. Rule Should Cover All Property

Comment: One respondent commented that "(i)ndustry agrees with the concept to sustain capability and supportability to the extent needed under major weapons systems." To that end, the respondent believes that this requirement should not be limited to special tooling, but should include "all property, i.e., special test equipment, ground support equipment, machine tools and machines and other intangibles to maintain capability."

Response: DoD is fully compliant with section 815, which addresses only special tooling.

With regard to tangible property, DoD notes that major systems acquisition contracts are required to include the clause at FAR 52.245–1, Government Property, which incorporates a basic storage requirement applicable to more than just special tooling (*see* FAR 52.245–1(f)(1)(viii)(A)). Further, in accordance with section 815, the MDA is required to "approve a plan, including the identification of any contract clauses, facilities, and funding required, for the preservation and storage of such tooling prior to Milestone C approval." This requirement is fully addressed by the Deputy Secretary of Defense memorandum dated August 3, 2009, which states that "MDAP Program Managers shall include a plan for preservation and storage of unique tooling as an annex to the Life Cycle Sustainment Plan (LCSP) submitted for Milestone Decision Authority (MDA) approval at Milestone C. The unique tooling annex shall include the identification of any contract clauses, facilities, and funding required for the preservation and storage of such tooling and shall describe how unique tooling retention will continue to be reviewed during the life of the program."

DoD considers "intangibles," as the term relates to major systems acquisitions, to be a reference to technical data. A contractor's rights in technical data are fully addressed in FAR and DFARS parts 27 and 227 respectively, and need not be addressed with the section 815 coverage.

C. "Unique Tooling"

Comment: Two respondents noted that the statute and the August 3, 2009, implementing memorandum use the term "unique tooling," not "special tooling." Both recommended that DFARS 207.106(S–73) be revised to use the term "unique tooling" and to add a definition to that paragraph as follows: "For DoD purposes, unique tooling shall mean special tooling as defined in Federal Acquisition Regulation 2.101(b)."

Response: DoD has determined that the use of "special tooling" in 207.106(S–73) correctly implements the statute, and no change is necessary.

Respondents agree that "unique tooling" and "special tooling" have the same meaning. However, there is no reason to use "unique tooling" in the coverage and then define it using a reference to FAR 2.101. That would contravene the FAR drafting convention to use a single term consistently to express the same meaning.

D. Approval of Preservation Plan

Comment: One respondent correctly noted that section 815 requires the MDA to approve the special tooling preservation plan prior to Milestone C approval (section 815(a)(1)). The respondent is concerned, however, with the lack of specificity about when the plan must be approved, claiming that it "risks undermining the very purpose of the rule and its antecedent legislation." The respondent recommended modifying DFARS 207.106 to require, or at least encourage, DoD to draft such plans before a program is given Milestone B approval.

Response: DoD has determined that DFARS is already fully compliant with the statute, and that no change is necessary. Further, while the plan must be approved prior to Milestone C approval, there is no limit in the regulations on how far in advance of Milestone C the special tooling preservation plan can be approved, as long as it is approved at a point in the system's life that is logical.

E. End of the Service Life of the Item

Comment: One respondent noted that section 815(a) requires that the special tooling be preserved "through the end of the service life of the end item associated with such a program." The respondent believes that "end item" refers to a "component" of the major system, not the major system itself. As noted by the respondent, it is possible that one component of a system may be replaced over the course of the production of the system as a whole, and it would be wasteful to maintain the special tooling for the now-obsolete component until production ends for the major system.

Response: DoD agrees with the respondent that it is possible, even likely, that one or more individual components of a major system will be replaced over the life of the major system. However, DoD points out that DoD policies are focused at the system level, and the requirement in section 815 is for a *plan* for the preservation and storage of the tooling associated with the production of hardware for a major defense acquisition program. DoD thinks that any complete plan would include the possibility of replacement

upgraded components and would not contemplate maintaining and storing any special tooling for components that are no longer a part of the major system end item.

F. Repricing Ongoing Programs

Comment: A respondent stated its belief that "the final rule must allow contractors to reprice ongoing programs should the plans for preserving tooling for major defense acquisition programs add additional requirements on to existing programs."

Response: The comment is outside the scope of this case. Further, whenever new or additional requirements are added to a contract, it can only be accomplished via a bilateral modification and with equitable consideration. This contract rule is not unique to MDAPs or tooling-preservation requirements. Therefore, this case need not address such a circumstance specifically with regard to the preservation of tooling. To do so would add inappropriate redundancy to the DFARS.

III. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review by the Office of Management and Budget under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule addresses internal DoD procedural matters. Specifically, this implementation of section 815 of the National Defense Authorization Act for Fiscal Year 2009, "Preservation of Tooling for Major Defense Acquisition Programs," requires that—

1. The DoD Milestone Decision Authority (MDA) approve a plan for the preservation and storage of unique tooling associated with the production of hardware for a major defense acquisition program through the end of the service life of the end item; and

2. The MDA periodically review the plan to ensure that it remains adequate and in the best interest of DoD.

V. Paperwork Reduction Act

The rule does not impose information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 207

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 207 is amended as follows:

PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add paragraph (S–73) to section 207.106 to read as follows:

207.106 Additional requirements for major systems.

* * * * *

(S–73) In accordance with section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and DoD policy requirements, acquisition plans for major weapons systems shall include a plan for the preservation and storage of special tooling associated with the production of hardware for major defense acquisition programs through the end of the service life of the related weapons system. The plan shall include the identification of any contract clauses, facilities, and funding required for the preservation and storage of such tooling. The Undersecretary of Defense for Acquisition, Technology, and Logistics (USD (AT&L)) may waive this requirement if USD (AT&L) determines that it is in the best interest of DoD.

[FR Doc. 2011–4529 Filed 3–1–11; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 227, 252

Defense Federal Acquisition Regulation Supplement; Government Support Contractor Access to Technical Data (DFARS Case 2009–D031)

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

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 821 of the National Defense Authorization Act for Fiscal Year 2010. Section 821 provides authority for certain types of Government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided that the technical data owner may require the support contractor to execute a non-disclosure agreement having certain restrictions and remedies.

Additionally, this interim rule amends the DFARS to provide needed editorial changes.

DATES: *Effective date:* March 2, 2011.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before May 2, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D031, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2009–D031" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2009–D031." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2009–D031" on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2009–D031 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, *Attn:* Ms. Amy G. Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

Section 821 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) was enacted October 28, 2009. Section 821 provides authority for certain types of Government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided that the technical data owner

may require the support contractor to execute a non-disclosure agreement having certain restrictions and remedies.

The DFARS scheme for acquiring rights in technical data is based on 10 U.S.C. 2320 and 2321. Section 2320 establishes the basic allocation of rights in technical data, and provides, among other things, that a private party is entitled to restrict the Government's rights to release or disclose privately-developed technical data outside the Government. This restriction is implemented in the DFARS as the "limited rights" license, which essentially limits the Government's use of such data only for in-house use, which does not include release to Government support contractors.

Historically, the statutorily based scheme has included only two categorical exceptions to the basic non-disclosure requirements for such privately-developed data:

- A "type" exception, in which the Government is granted unlimited rights in certain types of "top-level" data that are considered not to provide a competitive advantage by being treated as proprietary (*e.g.,* form, fit, and function data; data necessary for operation, maintenance, installation, or training; publicly available data) (2320(a)(2)(C)); and
- A "special needs" exception for certain important Government activities that are considered critical to Government operations (e.g., emergency repair and overhaul; evaluation by a foreign government), and are allowed only when the recipient of the data is made subject to strict non-disclosure restrictions on any further release of the data. (2320(a)(2)(D))

Section 821 amends 10 U.S.C. 2320 to add a new third statutory exception to the prohibition on release of privately developed data outside the Government that provides—"notwithstanding any limitation upon the license rights conveyed under subsection (a), allowing a covered Government support contractor access to, and use of, any technical data delivered under a contract for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data relates."

The statute also provides a definition of "covered Government support contractor" to mean—

"A contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(1) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) Executes a contract with the Government agreeing to and acknowledging—

(A) That proprietary or nonpublic technical data furnished will be accessed and used only for the purposes stated in that contract;

(B) That the covered Government support contractor will enter into a non-disclosure agreement with the contractor to whom the rights to the technical data belong;

(C) That the covered Government support contractor will take all reasonable steps to protect the proprietary and nonpublic nature of the technical data furnished to the covered Government support contractor during the program or effort for the period of time in which the Government is restricted from disclosing the technical data outside of the Government;

(D) That a breach of that contract by the covered Government support contractor with regard to a third party's ownership or rights in such technical data may subject the covered Government support contractor—

(i) To criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(ii) To civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach; and

(E) That such technical data provided to the covered Government support contractor under the authority of this section shall not be used by the covered Government support contractor to compete against the third party for Government or non-Government contracts.

II. Discussion and Analysis

Due to the significant level of detail in section 821, the recognition that the subject matter involves important privately-held intellectual property rights, and that the apparent congressional intent is that the private parties will enter into a direct legal relationship (*e.g.,* a non-disclosure agreement) regarding protections for same, DoD decided to utilize the original statutory language and to preserve maximum flexibility for the private parties to reach mutual agreement—without unnecessary interference from the Government.

Section 821 can be characterized as establishing two new requirements regarding DoD's acquisition and exercise of rights in proprietary technical data. The statute—

- Provides an exception to the statutorily authorized restrictions on the Government's rights to release privately-developed technical data outside the Government. The Government is now authorized to make limited releases of otherwise-proprietary data to certain types of support contractors that are supporting directly the Government's management and oversight of programs—subject to certain protections.
- Mandates specific restrictions for the Government support contractors that will receive the proprietary technical data, to ensure that this use does not threaten the data owner's competitive advantage due to the proprietary information, and to provide the data owner with a more direct legal remedy against the support contractor for any breach of those use restrictions.

A. Scope and Applicability

Section 821 amended 10 U.S.C. 2320, which applies to technical data, but not to computer software (which is expressly excluded from the definition of technical data). There is no parallel statute that establishes regulatory requirements for DoD acquisition of computer software. However, it is longstanding Federal and DoD policy and practice to apply to computer software the same or analogous requirements that are used for technical data, whenever appropriate. Many issues are common to both technical data and computer software, and in such cases, conformity of coverage between technical data and computer software is desirable.

For example, although the DFARS provides separate coverage for technical data and computer software (subparts 227.71 and 227.72, respectively), the policies and procedures are identical or analogous in most respects. Regarding the allocation of rights in privately-developed technologies, and the release restrictions and procedures used to protect such proprietary information against unauthorized release to Government support contractors (or any third party, for that matter), the DFARS adapts the detailed technical data procedures for application to noncommercial computer software (*see* 227.7203), but does not apply those same detailed requirements to commercial computer software (*see* 227.7202). Therefore, analogous revisions are made in this interim rule to the DFARS coverage for noncommercial software.

B. Revised Licensing and New Requirements for Owners of Proprietary Information

Section 821 creates a new exception to the statutory authorization for a private party to restrict the Government's ability to release or disclose privately-developed technical data outside the Government. *See* 10 U.S.C. 2320(c)(2). The Government is now authorized to release privately-developed technical data to any support contractors that meet the criteria for a "covered Government support contractor," provided that the covered Government support contractor's access and use of the data is for the "sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data relates." 10 U.S.C. 2320(c)(2).

This interim rule incorporates the new exception into the definition of "limited rights" and adds a new definition for "covered Government support contractor" into the following primary rights-allocation clauses: 252.227–7013 (noncommercial technical data), 252.227–7014 (noncommercial software and software documentation), 252.227–7015 (commercial technical data), and 252.227–7018 (Small Business Innovation Research (SBIR)).

• The exception is inserted into the "limited rights" definition by adding "covered Government support contractors" to the existing lists of statutory exceptions to the prohibition against releasing limited rights data outside the Government. *See* 252.227–7013(a)(14) (formerly (13)); 252.227–7015(b)(2)(ii), which does not use the term "limited rights" but implements the same underlying statutory requirements; and 252.227–7018(a)(15) (formerly (14)). The revisions to 252.227–7013 and –7018 also required some minor restructuring of the listings of statutory exceptions.

• The new definition for "covered Government support contractor" is inserted into the cited clauses as new 252.227–7013(a)(5), 252.227–7014(a)(6), 252.227–7015(a)(2), and 252.227–7018(a)(6). In each case, the insertion of a new definition requires the renumbering of all subsequent definitions in the affected clauses. The term is defined using, nearly verbatim, the new statutory definition at 2320(f)—with one key modification: Rather than reproducing all of the required non-disclosure restrictions in the definition, the definition cross-references the implementation of those same restrictions at revised 252.227–7025.

In addition, the clauses are revised to incorporate specific additional requirements that are important to support and enable the implementation of the new exception. In particular, the new statutory exception establishes the basic requirement that the covered Government support contractor must execute a contract with the Government, in which the covered Government support contractor agrees and acknowledges that it "will" enter into a non-disclosure agreement directly with the owner of the proprietary data, and thus the clause must also implement this direct non-disclosure agreement requirement within the rights and obligations of the owner of the data. Since this direct non-disclosure agreement requirement is created with the intent of protecting the proprietary rights of the data owner, DoD has implemented this by providing the data owner the *sole discretion* to require such a direct non-disclosure agreement or waive the non-disclosure agreement requirement in writing in each individual case. The protection offered by the new direct non-disclosure agreement requirement should not be implemented in a manner that it becomes an unwanted and unnecessary burden on the party it is intended to protect. Thus, the data owner may determine that executing a direct non-disclosure agreement with every covered Government support contractor, in every individual case, is unnecessary; provided such determinations are made in view of the multi-layered protection scheme to ensure that the data owner's rights are protected regardless of whether the parties execute a direct non-disclosure agreement, including the data owner already having a direct legal remedy against the covered Government support contractor for any unauthorized use or release pursuant to 252.227–7025(c)(2).

Accordingly, the data owner is notified of its rights and obligations regarding covered Government support contractors in proposed new coverage at 252.227–7013(b)(3)(iv), 252.227–7015(b)(3), and 252.227–7018(b)(8). In each case, the new coverage acknowledges the newly authorized release to covered Government support contractors; confirms that the data owner will be notified of such release; provides the data owner the discretion to require the covered Government support contractor to execute a direct non-disclosure agreement; and acknowledges that the data owner and covered Government support contractor may include additional terms and conditions in such a non-disclosure agreement by mutual agreement, as long as the basic statutory requirements for the non-disclosure agreement are also addressed (these basic statutory requirements are provided at 252.227–7025).

In addition, these same requirements are also appropriate for adaptation to the corresponding DFARS coverage for noncommercial technical data. Thus, equivalent revisions are incorporated in 252.227–7014, including a new definition of "covered Government support contractor" at paragraph (a)(6), a revised definition of "restricted rights" (the computer software equivalent of limited rights for technical data) at (a)(15) (formerly (14)), and the supporting rights and procedures at new (b)(3)(iii). Because there is no current DFARS coverage for this subject matter in the context of commercial computer software, no revisions are made to 227.7202.

C. New Requirements for Support Contractors Accessing Government-Furnished Proprietary Information

As discussed previously, section 821 allows covered Government support contractors to have access to third party proprietary technical data only when the covered Government support contractor is subject to specific prohibitions and requirements to protect that data. Although the statute incorporates these detailed protections within the definition of covered Government support contractor, DoD has implemented these protections within the existing DFARS coverage that implements use and non-disclosure requirements for recipients of Government-furnished information that is proprietary data or software, and has cross-referenced that implementation in the definition of covered Government support contractor.

This requires adaptation of the current DFARS coverage governing the Government's release to privately-owned proprietary data and software, found primarily at 227.7103–7, and in the clause at 252.227–7025. There are two key revisions to 252.227–7025:

• Paragraph (b)(1), regarding Government-furnished information marked with limited rights or restricted rights legends, is amended by adding new subparagraph (ii), which implements, nearly verbatim, the statutory requirements from 2320(f)(2), and also recognizes that the third party owner of the proprietary data or software has the sole discretion regarding whether a direct non-disclosure agreement will be required, and that the parties to the non-

disclosure agreement may incorporate additional terms and conditions by mutual agreement, provided that the basic statutory requirements are addressed.

• New paragraph (b)(4) is added to cover the Government-furnished information marked with commercial restrictive legends, as necessary to implement the new statutory requirements, rights, and obligations related to technical data pertaining to commercial items, and to support the previously discussed revisions to 252.227–7015. This new language parallels the revisions discussed above for noncommercial data and software at new (b)(1)(ii).

D. Miscellaneous

The revisions also require the covered Government support contractor to provide to the contracting officer, upon request, a copy of—

• Any non-disclosure agreement executed by the covered Government support contractor and the proprietary data owner; or

• Waiver of the non-disclosure agreement requirement by the proprietary data owner.

See 252.227–7013(b)(3)(iv)(E), 252.227–7014(b)(3)(iii)(E), 252.227–7015(b)(3)(v), and 252.227–7025(b)(1)(ii)(E) and (b)(4)(ii)(E). This language was adapted from a similar authority at FAR 9.505–4(b), which mandates that contracting officers obtain copies of relevant non-disclosure agreements.

Finally, to provide an appropriate link to these new requirements from the current FAR and DFARS coverage regarding non-disclosure agreement requirements for support contractors having access to third party proprietary information in performing advisory and assistance services, new DFARS 209.505–4 is added.

III. Executive Order 12866

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., but has nevertheless prepared an initial regulatory flexibility analysis, which is summarized as follows:

The objective of the rule is to provide policy and procedures to allow certain types of Government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties. Section 821 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) provides the legal basis for the rule.

The rule affects small businesses that are Government support contractors that need access to proprietary technical data belonging to prime contractors and other third parties. It will also affect any small business that is the owner of "limited rights" technical data in the possession of the Government to which the support contractor will require access.

The statute provides that the support contractor must be willing to sign a non-disclosure agreement with the owner of the data. The rule has implemented this requirement in a way that preserves maximum flexibility for the private parties to reach mutual agreement without unnecessary interference from the Government. To reduce burdens, the rule permits the owner of the data to waive the requirement for a non-disclosure agreement, since the Government clauses already adequately deal with non-disclosure. Further, the rule provides that the support contractors cannot be required to agree to any conditions not required by statute. The Government support contractor must provide to the contracting officer, upon request, a copy of the non-disclosure agreement or the waiver of the requirement for a non-disclosure agreement (consistent with FAR 9.505–4(b)).

There are no known significant alternatives to the rule that would meet the requirements of the statute and minimize any significant economic impact of the rule on small entities. The impact of this rule on small business is not expected to be significant because the execution of a non-disclosure agreement is not likely to have a significant cost or administrative impact.

V. Paperwork Reduction Act

The Paperwork Reduction Act applies because the DFARS rule affects DFARS clauses 252.227–7013, 252.227–7014, 252.227–7015, and 252.227–7025, which contain reporting or recordkeeping requirements that require the approval of the Office of Management and Budget under 44 U.S.C., chapter 35. These clauses are covered by an approved OMB control number 0704–0369 in the amount of approximately 1.76 million hours. The requirement for Government support contractors to provide to the contracting officer a copy of a non-disclosure agreement or a waiver of the non-disclosure agreement requirement is only applicable if requested by the contracting officer. DoD has determined that the currently approved burden hours are sufficient to cover this minimal requirement. However, DoD will accept comments on how the interim rule would impact either the burden or other aspects of the approved information collection.

VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment pursuant to 41 U.S.C. 1707 (formerly 41 U.S.C. 418b) and FAR 1.501–3(b). This interim rule implements section 821 of the National Defense Authorization Act for Fiscal Year 2010, enacted October 28, 2009. Section 821 provides authority for certain types of Government support contractors to have access to proprietary technical data belonging to prime contractors and other third parties, provided that the technical data owner may require the support contractor to execute a non-disclosure agreement having certain restrictions and remedies. Section 821 was effective upon enactment. This interim rule is necessary to provide the policies and procedures allowing a covered Government support contractor access to and use of any technical data delivered under a contract so that the contractor can furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data relates. DoD will consider public comments received in response to this interim rule in the formulation of the final rule.

List of Subjects in 48 CFR Parts 209, 227, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 209, 227, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209, 227, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

■ 2. In section 209.403, paragraph (1), remove "Navy—The General Counsel of the Department of the Navy" and add in its place "Navy—The Assistant General Counsel (Acquisition Integrity)".

■ 3. Add sections 209.505 and 209.505–4 to subpart 209.5 to read as follows:

209.505 General rules.

209.505–4 Obtaining access to proprietary information.

(b) Non-disclosure requirements for contractors accessing third party proprietary technical data or computer software are addressed at 227.7103–7(b), through use of the clause at 252.227–7025 as prescribed at 227.7103–6(c) and 227.7203–6(d). Pursuant to that clause, covered Government support contractors may be required to enter into non-disclosure agreements directly with the third party asserting restrictions on limited rights technical data, commercial technical data, or restricted rights computer software.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 4. Revise section 227.7102–2, paragraph (a), to read as follows:

227.7102–2 Rights in technical data.

(a) The clause at 252.227–7015, Technical Data—Commercial Items, provides the Government specific license rights in technical data pertaining to commercial items or processes. DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government. The data may not be used to manufacture additional quantities of the commercial items and, except for emergency repair or overhaul and for covered Government support contractors, may not be released or disclosed to, or used by, third parties without the contractor's written permission. Those restrictions do not apply to the technical data described in 227.7102–1(a).

* * * * *

■ 5. Amend section 227.7103–5 as follows:

■ (a) Revise paragraph (c)(2) as set forth below; and

■ (b) Revise paragraph (c)(4) as set forth below.

227.7103–5 Government rights.

* * * * *

(c) * * *

(2) Data in which the Government has limited rights may not be used, released, or disclosed outside the Government without the permission of the contractor asserting the restriction except for a use, release or disclosure that is—

(i) Necessary for emergency repair and overhaul; or

(ii) To a covered Government support contractor; or

(iii) To a foreign government, other than detailed manufacturing or process data, when use, release, or disclosure is in the interest of the United States and is required for evaluational or informational purposes.

* * * * *

(4) When the person asserting limited rights permits the Government to release, disclose, or have others use the data subject to restrictions on further use, release, or disclosure, or for a release under paragraph (c)(2)(i), (ii), or (iii) of this subsection, the intended recipient must complete the use and non-disclosure agreement at 227.7103–7, or receive the data for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, prior to release or disclosure of the limited rights data.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 252.212–7001 as follows:

■ (a) Amend the clause date by removing "(JAN 2011)" and adding in its place "(MAR 2011)";

■ (b) In paragraph (b)(4), remove "(OCT 2010)" and add in its place "(JAN 2011)";

■ (c) In paragraph (b)(7), remove "(JUL 2009)" and add in its place "(JAN 2011)"; and

■ (d) In paragraph (b)(17), remove "(NOV 1995)" and add in its place "(MAR 2011)".

■ 7. Amend section 252.227–7013 as follows:

■ (a) Amend the clause date by removing "(NOV 1995)" and adding in its place "(MAR 2011)";

■ (b) Amend the introductory text of paragraph (a) by removing ":" and adding in its place "—";

■ (c) Redesignate paragraphs (a)(5) through (a)(15) as paragraphs (a)(6) through (a)(16);

■ (d) Add new paragraph (a)(5) to read as set forth below;

■ (e) Revise newly designated paragraph (a)(14) to read as set forth below;

■ (f) Add new paragraph (b)(3)(iv) to read as set forth below;

■ (g) Amend the clause date for Alternate II by removing "(NOV 2009)" and adding in its place "(MAR 2011)";

■ (h) Amend the introductory text of Alternate II by removing "(a)(16)" and adding in its place "(a)(17)"; and

■ (i) Redesignate paragraph (a)(16) of Alternate II as paragraph (a)(17).

The additions and revisions read as follows:

252.227–7013 Rights in technical data—noncommercial items.

* * * * *

(a) * * *

(5) *Covered Government support contractor* means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

* * * * *

(14) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(*1*) A covered Government support contractor, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract; or

(*2*) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data

by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

* * * * *

(b) * * *

(3) * * *

(iv) The Contractor acknowledges that—

(A) Limited rights data is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at 252.227–7025, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

* * * * *

■ 8. Amend section 252.227–7014 as follows:

■ (a) Amend the clause date by removing "(JUN 1995)" and adding in its place "(MAR 2011)";

■ (b) Amend the introductory text of paragraph (a) by removing ":" and adding in its place "—";

■ (c) Redesignate paragraphs (a)(6) through (a)(15) as paragraphs (a)(7) through (a)(16);

■ (d) Add new paragraph (a)(6) to read as set forth below;

■ (e) Revise newly designated paragraphs (a)(15)(iv), (a)(15)(v)(C) and (D), and (a)(15)(vi)(B), and add (a)(15)(vii) to read as set forth below;

■ (f) Add paragraph (b)(3)(iii) to read as set forth below.

The additions and revisions read as follows:

252.227–7014 Rights in noncommercial computer software and noncommercial computer software documentation.

* * * * *

(a) * * *

(6) *Covered Government support contractor* means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

* * * * *

(15) * * *

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v), (vi), and (vii) of this clause;

(v) * * *

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(15)(i) of this clause;

(vi) * * *

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any other purpose; and

(vii) Permit covered Government support contractors to use, modify, reproduce, perform, display, or release or disclose the computer software to authorized person(s) in the performance of Government contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

* * * * *

(b) * * *

(3) * * *

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

* * * * *

■ 9. Amend section 252.227–7015 as follows:

■ (a) Amend the clause date by removing "(NOV 1995)" and adding in its place "(MAR 2011)";

■ (b) Revise paragraphs (a) and (b)(2), and add paragraph (b)(3) to read as set forth below; and

■ (c) Revise Alternate I to read as set forth below.

The additions and revisions read as follows:

252.227–7015 Technical data—Commercial items.

* * * * *

(a) *Definitions.* As used in this clause—

(1) *Commercial item* does not include commercial computer software.

(2) *Covered Government support contractor* means a contractor under a

contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(3) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(4) The term *item* includes components or processes.

(5) *Technical data* means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) * * *

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by covered Government support contractors.

(3) The Contractor acknowledges that—

(i) Technical data covered by paragraph (b)(2) of this clause is authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for an non-disclosure agreement;

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

* * * * *

Alternate I (Mar 2011)

As prescribed in 227.7102–3(a)(2), add the following paragraphs (a)(6) and (b)(4) to the basic clause:

(a)(6) *Vessel design* means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, *et seq.*

(b)(4) *Vessel designs.* For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

■ 10. Amend section 252.227–7018 as follows:

■ (a) Amend the clause date by removing "(JAN 2011)" and adding in its place "(MAR 2011)";

■ (b) Amend the introductory text of paragraph (a) by removing ":" and adding in its place "—";

■ (c) Redesignate paragraphs (a)(6) through (a)(20) as paragraphs (a)(7) through (a)(21);

■ (d) Add new paragraph (a)(6) to read as set forth below;

■ (e) Revise newly designated paragraph (a)(15) to read as set forth below;

■ (f) Revise newly designated paragraphs (a)(18)(iv) through (a)(18)(vi) to read as set forth below;

■ (g) Add new paragraph (a)(18)(vii) to read as set forth below; and

■ (h) Add paragraph (b)(8) to read as set forth below.

The additions and revisions read as follows:

252.227–7018 Rights in noncommercial technical data and computer software—small business innovation research (SBIR) program.

* * * * *

(a) * * *

(6) *Covered Government support contractor* means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to the technical data or computer software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

* * * * *

(15) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(*1*) A covered Government support contractor, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract; or

(*2*) A foreign government, of technical data (other than detailed manufacturing or process data), when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

* * * * *

(18) *Restricted rights* apply only to noncommercial computer software and mean the Government's rights to—

* * * * *

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(18)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(18)(ii), (v), and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (*see* 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(18)(i) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the non-disclosure agreement at 227.7103–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government–Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any other purpose; and

(vii) Permit covered Government support contractors to use, modify, reproduce, perform, display, or release or disclose the computer software to authorized person(s) in the performance of Government contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

* * * * *

(b) * * *

(8) Covered Government support contractors. The Contractor acknowledges that—

(i) Limited rights technical data and restricted rights computer software are authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions as identified in a restrictive legend) regarding the covered Government support contractor's use of such data or software, or alternatively that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data or software as set forth in the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and

(v) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

* * * * *

■ 11. Amend section 252.227–7025 as follows:

■ (a) Amend the clause date by removing "(JAN 2011)" and adding in its place "(MAR 2011)"; and

■ (b) Revise paragraphs (a) and (b) to read as set forth below.

252.227–7025 Limitations on the use or disclosure of government-furnished information marked with restrictive legends.

* * * * *

(a)(1) For contracts in which the Government will furnish the Contractor with technical data, the terms "covered Government support contractor," "limited rights," and "Government purpose rights" are defined in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items.

(2) For contracts in which the Government will furnish the Contractor with computer software or computer software documentation, the terms "covered Government support contractor," "government purpose rights," and "restricted rights" are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

(3) For Small Business Innovation Research program contracts, the terms "covered Government support contractor," "limited rights," and "restricted rights" are defined in the clause at 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

(b) Technical data or computer software provided to the Contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *GFI marked with limited or restricted rights legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor further agrees and acknowledges that—

(A) The data or software will be accessed and used only for the purposes stated in this contract and shall not be used to compete for any Government or non-Government contract;

(B) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(C) The Contractor will ensure that the party whose name appears in the legend is notified of the Contractor's access or use of such data or software;

(D) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement;

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request; and

(F) That a breach of these obligations or restrictions may subject the Contractor to—

(*1*) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(*2*) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(2) *GFI marked with government purpose rights legends.* The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103–7.

(3) *GFI marked with specially negotiated license rights legends.* The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at 227.7103–7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(4) *GFI marked with commercial restrictive legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial items, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor further agrees and acknowledges that—

(A) The data or software will be accessed and used only for the purposes stated in this contract and shall not be used to compete for any Government or non-Government contract;

(B) The Contractor will take all reasonable steps to protect the technical data against any unauthorized release or disclosure;

(C) The Contractor will ensure that the party whose name appears in the legend is or has been notified of the Contractor's access or use of such data;

(D) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data as set forth in this clause, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement;

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request; and

(F) That a breach of these obligations or restrictions may subject the Contractor to—

(*1*) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(*2*) Civil actions for damages and other appropriate remedies by the contractor or subcontractor whose technical data is affected by the breach.

* * * * *

[FR Doc. 2011–4531 Filed 3–1–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 232, and 252

RIN 0750–AG56

Defense Federal Acquisition Regulation Supplement; Payments in Support of Emergencies and Contingency Operations (DFARS Case 2009–D020)

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

ACTION: Final rule.

SUMMARY: DoD is adopting as a final rule, with minor changes, an interim rule that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement exemptions from the Prompt Payment Act. The interim rule exempted military payments related to contingencies and certain payments related to emergencies and the release or threatened release of hazardous substances.

DATES: *Effective date:* March 2, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

5 CFR part 1315 exempts from Prompt Payment Act compliance payments related to emergencies (defined in the

Disaster Relief Act of 1974, Pub. L. 93–288, as amended (42 U.S.C. 5121, *et seq.*); contingency operations (as defined in 10 U.S.C. 101(a)(13)); and the release/threatened release of hazardous substances (as defined in 4 U.S.C. 9606, Section 106). DoD requires the flexibility provided by 5 CFR part 1315, Exemption from the Prompt Payment Act, because of the potential for unstable environments during emergencies and contingency operations.

DoD published an interim rule in the Federal Register (75 FR 40712) on July 13, 2010, to implement the full authority granted by 5 CFR 1315.1 for payments covered by 5 CFR 1315.1(b)(2) that are either certified for payment in an operational area, or are contingent upon the receipt of necessary supporting documentation (*i.e.,* contract, invoice, receiving report) emanating from an operational area. The public comment period closed September 13, 2010.

II. Analysis of Public Comments

One respondent provided comments on the interim rule. A discussion of the comments follows:

A. Applicability of FAR Subpart 32.9

Comment. The respondent notes that DFARS 232.901, Applicability, states that FAR subpart 32.9 does not apply when the conditions therein are listed. However, DFARS 232.908, Contract clauses, states that the appropriate FAR Prompt Payment clause prescribed at FAR 32.908 should be included in the contract in addition to DFARS 252.232–7011, Payments in Support of Emergencies and Contingency Operations. Thus, FAR 32.908 still applies when the conditions at DFARS 232.901 are met. According to the respondent, the statement that "FAR subpart 32.9, Prompt Payment, does not apply when—" needs to be qualified to state that FAR 32.908 still applies.

Response. DoD concurs and the text has been revised accordingly.

B. Inclusion of Two Payment Clauses

Comment. The respondent states that it would be less confusing if the contract just contained either DFARS 252.232–7011, Payments in Support of Emergencies and Contingency Operations, or a FAR Prompt Payment clause. According to the respondent, if the environment became more stable or less stable, the contracting officer could bilaterally modify the contract to remove one clause and add the other. The respondent states that including both clauses and notifying the contractor which one applies by contract modification is an unusual, and unnecessary, way to administer a contract.

Response. DoD does not concur as the Government requires the maximum flexibility provided by DFARS subpart 232.9, Prompt Payment, in order to operate in such austere environments as Iraq and Afghanistan. This flexibility requires the ability to move from the appropriate FAR Prompt Payment clause when normal business conditions are possible, to the clause at DFARS 252.232–7011, Payments in Support of Emergencies and Contingency Operations, when an austere environment exists. The conditions described at 232.901, Applicability, provide guidelines for when austere operations are present. Contractors that operate in potential environments that may go back and forth from stable to unstable operations are given the opportunity to price such conditions into their proposals. The Government reserves the right to structure such contracts for this flexibility, and to convert the appropriate FAR or DFARS clause for the given situation, rather than depending upon a bilateral modification, to which the contractor might not agree, and which would require negotiation of consideration. As currently stated, the contracting officer can issue a unilateral contract modification notifying the contractor which clause is active.

This final rule provides DoD the needed flexibility in limited circumstances. The head of the contracting activity shall make subsequent determinations, after consultation with the cognizant comptroller, as the operational area evolves into a more stable business environment to enable the provisions of FAR 32.9 to apply.

III. Executive Order 12866

This regulatory action was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this final rule to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604 which is summarized below. A copy of the analysis may be obtained from the point of contact.

On May 22, 2008, the DoDIG issued the results of an audit Report No. D–2008–098, entitled "Internal Controls Over Payments Made in Iraq, Kuwait, and Egypt." The audit cited inconsistencies in FAR 32.9, DFARS 232.9, and 5 CFR in regard to compliance with the Prompt Payment Act for military contingency operations. The audit further recommended that DoD establish procedures to address contingency operations.

During emergencies and contingency operations, the operational area can be so fluid and dynamic that carrying out normal business practices can be extremely challenging. It is necessary for the Head of the Contracting Activity (HCA) to have the authority to appropriately respond to emergency and contingency operations accordingly whenever limited operational conditions exist. This includes the payment of contractors.

This final rule takes advantage of the exemption provided by OMB implementation of the Prompt Payment Act, which exempts military contingencies. This rule allows the HCA to make a determination of whether or not stable business operations exist in theater to allow the Prompt Payment Act to apply in an emergency and contingency operation. If stable conditions don't exist, then the HCA is authorized to apply the clause at 252.232–7011, Payments in Support of Emergencies and Contingency Operations. When this clause is invoked, it will be used instead of one of the payment clauses at FAR 52.232–25, 52.232–26, or 52.232–27. DFARS 232.901 will require the HCA to make subsequent determinations as the operational area evolves into a more stable environment to enable the provisions of the Prompt Payment Act to apply. It will also require the contracting officer to notify, by contract modification, each contractor that has a contract containing DFARS clause 252.232.7011, that it is no longer applicable, and the applicable FAR Prompt Payment clause in the contract applies.

No significant issues were raised by the public in response to the initial regulatory flexibility analysis.

This rule is expected to have a minimal economic impact on a relatively small number of small business entities. It is anticipated that the rule could initially be applied to contracts supporting Afghanistan. As of today, normal business operations are hindered in Afghanistan due to the uncertain environment and instability in the region. It may be impractical for U.S. forces to adequately match receipt of necessary supporting documentation (*i.e.,* contract, invoice, and receiving

report) in such an operational area. It is expected the HCA for Afghanistan could exempt "payments made in the theater of operations" from Prompt Payment Act interest and interest penalties.

In the preparation of the interim rule, a review of Federal Procurement Data Systems data for FY08 showed that of the 140 awards made to U.S. firms, only 21 were made to small business entities. This total represents 15 percent of all awards made during this time period. Therefore, the overall impact of the rule is not expected to have a significant aggregate economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, a regulatory flexibility analysis was completed because there is an economic impact to consider.

There is no reporting requirement established by this rule. There are no significant alternatives which accomplish the stated objectives. This rule will allow DoD to utilize the exemptions provided by OMB implementation of the Prompt Payment Act, which exempts military contingencies.

V. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 232, and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System confirms as final the interim rule published at 75 FR 40712, July 13, 2010, with the following changes:

■ 1. The authority citation for 48 CFR part 232 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Section 232.901 is amended by—

■ a. Revising the first sentence of paragraph (1) introductory text to read as set forth below;

■ b. Amending paragraph (1)(i)(C) by removing "Section" and adding in its place "section".

232.901 Applicability.

(1) Except for FAR 32.908, FAR subpart 32.9, Prompt Payment, does not apply when—

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[FR Doc. 2011–4526 Filed 3–1–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080513659–1114–03]

RIN 0648–AW75

Fisheries of the Northeastern United States; Atlantic Herring; Amendment 4

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

ACTION: Final rule.

SUMMARY: This rule implements approved measures in Amendment 4 to the Atlantic Herring (Herring) Fishery Management Plan (FMP). Amendment 4 was developed by the New England Fishery Management Council (Council) to bring the FMP into compliance with new Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirements by: Revising definitions and the specifications-setting process, consistent with annual catch limit (ACL) requirements; and establishing fishery closure thresholds, a haddock incidental catch cap, and overage paybacks as accountability measures (AMs). In addition, the amendment designates herring as a "stock in the fishery;" establishes an interim acceptable biological catch (ABC) control rule; and makes adjustments to the specification process by eliminating consideration of total foreign processing (JVPt), including joint venture processing (JVP) and internal waters processing (IWP), and reserve from the specification process, and eliminates the Council's consideration of total allowable level of foreign fishing (TALFF).

DATES: Effective April 1, 2011.

ADDRESSES: An environmental assessment (EA) was prepared for Amendment 4 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 4, including the EA, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov.*

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

This amendment brings the Herring FMP into compliance with requirements of the reauthorization of the MSA in 2006, specifically ACLs and AMs. Because herring is not subject to overfishing, the MSA requires the Herring FMP to be in compliance with ACL and AM requirements by 2011. In addition to the public meetings at which Amendment 4 was developed, the Council held three public meetings on the draft Amendment 4 and its EA during January 2010. Following the public comment period that ended on January 12, 2010, the Council adopted Amendment 4 on January 26, 2010, and submitted the amendment to NMFS on April 22, 2010. The Notice of Availability (NOA) for Amendment 4 was published on August 12, 2010, with a comment period ending October 12, 2010. A proposed rule for Amendment 4 was published on October 18, 2010, with a comment period ending December 2, 2010. On November 9, 2010, NMFS approved Amendment 4 on behalf of the Secretary of Commerce.

Initially, the Council intended for Amendment 4 to also consider the issues of catch monitoring and reporting, interactions with river herring, access by midwater trawl vessels to groundfish closed areas, and interactions with the Atlantic mackerel fishery. In June 2009, the Council determined there was not sufficient time to develop and implement all the measures originally contemplated in Amendment 4 by 2011, so it decided that Amendment 4 would only address ACL and AM requirements and specification issues. The other issues (e.g., catch monitoring and reporting, interactions with river herring and Atlantic mackerel, access to groundfish closed areas) are currently being considered in Amendment 5 to the Herring FMP (Amendment 5). NMFS has the independent authority to revise reporting requirements, and has informed the Council that it will be developing a rulemaking to establish

daily catch reporting for limited access herring vessels in 2011.

This rule implements management measures that: Revise current definitions and the specification-setting process to include ACLs and AMs; designate herring as a "stock in the fishery;" establish an interim ABC control rule; eliminate JVPt, including JVP and IWP, and reserve from the specifications process; and eliminate the Council's consideration of TALFF. The proposed rule includes detailed information about the Council's development of these measures, and that discussion is not repeated here.

ACL Specification Process

Amendment 4 revises the specification-setting process for the herring fishery. This action establishes a process whereby an overfishing limit (OFL) may be set, which corresponds to a maximum sustainable yield (MSY). This action specifies that ABC is to be recommended by the Council's Scientific and Statistical Committee (SSC). During the setting of ABC, scientific uncertainty is to be considered, and ABC may be reduced from the OFL to account for scientific uncertainty. Scientific uncertainty includes, but is not limited to, uncertainty related to stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues. This action establishes a process whereby a stock-wide ACL may be set that is to be equal to or less than ABC. During the setting of the stock-wide ACL, management uncertainty is to be considered. The stock-wide ACL may be reduced from the ABC to account for management uncertainty, which includes, but is not limited to, uncertainty related to expected catch of herring in the New Brunswick weir fishery and discard estimates of herring caught in Federal and state waters.

The stock-wide ACL is specified to account for all herring catch. Estimates of discards are reported by harvesters, and provided by NMFS observers. The available information suggests that discards in the herring fishery are low, relative to the amount of landed herring. Therefore, this action does not establish a specific deduction between the ABC and stock-wide ACL, to account for management uncertainty related to discards at this time. However, if new information on discards becomes available, Amendment 4 provides the Council with flexibility to incorporate that information into the stock-wide ACL-setting process as appropriate.

This action revises the specifications authorized by the Herring FMP. The original FMP authorizes specifications for JVPt, JVP, IWP, reserve, and TALFF to be set for the herring fishery. Historically, JVPt (including JVP and IWP) was allocated to enable foreign processing operations to accept catch from U.S. vessels; TALFF was allocated to ensure fish were available to foreign processing vessels when U.S. vessels could not supply it. The U.S. herring fishery has experienced growth in both harvesting and processing capacity, accordingly, neither JVPt nor TALFF have been allocated since 2005. Because the U.S. herring industry is capable of harvesting and processing the entire available yield in the foreseeable future, and to maximize U.S. economic benefits, this action eliminates the annual specifications of JVPt, JVP, and IWP from the Herring FMP. Additionally, while TALFF could still be awarded consistent with the MSA, if the Secretary of Commerce determines there is inadequate domestic harvesting capacity and other requirements of section 201 of the MSA are satisfied, this action eliminates Council consideration of TALFF during development of the specifications.

Historically, the FMP included the reserve to buffer against such things as uncertainty in stock size estimates, uncertainty in Canadian catch, excess U.S. capacity entering the herring fishery, and fluctuations in import/export demand. With the implementation of limited access in 2007 and Amendment 4's proposed consideration of sources of scientific and management uncertainty in the setting of OFL, ABC, and ACL, the Council concluded that specifying a reserve is no longer necessary. Therefore, this action eliminates the specification of reserve from the Herring FMP.

With the implementation of Amendment 1 to the Herring FMP (72 FR 11252, March 12, 2007), the Council has the authority to set herring specifications for a period of 3 years. Amendment 4 maintains the current schedule of setting herring specifications for a period of 3 years.

The herring stock complex is considered to be a single stock, but it is comprised of inshore (Gulf of Maine (GOM)) and offshore (Georges Bank (GB)) stock components. These stock components segregate during spawning and mix during feeding and migration. Herring management areas were developed in recognition of these different stock components; each management area has a total allowable catch (TAC) to allow the fishing mortality of the stock components to be managed independently. Area 1 is located in the GOM and is divided into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on GB. Because the inshore stock component has substantially less biomass than the offshore stock component, it is likely more vulnerable to overfishing. This action maintains the function of the herring management area TACs, but re-defines each area TAC as an area sub-ACL (i.e., each management area has its own sub-ACL). The Area 1A TAC is currently allocated to two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. This action maintains these seasons and allocates the Area 1A sub-ACL into the same two seasonal periods.

The specification of OY is required by the MSA and authorized in the current Herring FMP. OY is derived from MSY, as reduced by relevant economic, social, or ecological factors. This action specifies that OY remain part of the specification-setting process, that it is to be equal to or less than ABC, and that it address uncertainty related to economic, social, or ecological factors. For example, the Council may choose to allocate an OY that is reduced from ABC to address the role of herring as forage or the fishing mortality rate on the inshore stock component. If the Council allocates a reduced OY, it would be in addition to any consideration of scientific or management uncertainty and would be a specific reduction to address a specific issue.

Stocks in a Fishery

The MSA requires that an FMP contain a description of the fish species in a fishery, and National Standard 1 guidelines task the Council with determining which specific target stocks and/or non-target stocks to include in the fishery. Target stocks are defined as stocks that fishers seek to catch for sale or personal use, and non-target stocks are fish caught incidentally during the pursuit of target stocks. In general, any stock managed through an FMP is considered to be in that fishery. While other species are caught incidentally when fishing for herring, herring is the target stock, and the only stock directly managed by the Herring FMP. This action establishes herring as a stock in the fishery. The Council retains the authority to designate additional stocks in the fishery in a future action. Bycatch in the herring fishery will continue to be addressed and minimized to the extent possible, consistent with other requirements of the MSA. Additionally,

incidental catch in the herring fishery counts against the ACLs for incidental catch species if ACLs have been established in their respective Federal FMPs.

Interim ABC Control Rule

The ABC control rule is the specified method of setting the ABC, giving full consideration to scientific uncertainty. The ABC control rule is based on scientific advice from a Council's SSC and, when possible, considers the probability of overfishing. The ABC control rule should consider the scientific uncertainty associated with stock assessment results, including time lags in updating assessments, the degree of retrospective revision of assessment results, and the uncertainty of stock projections.

During development of the 2010–2012 herring specifications, the SSC identified two sources of scientific uncertainty in the 2009 herring assessment: (1) The assessment model has a strong retrospective pattern that reduces estimates of stock size when updated with new (2001–2007) data; and (2) biomass projections suggest the herring stock cannot rebuild to B_{MSY} (biomass that would support MSY) using long-term projections at F_{MSY} (fishing mortality rate for MSY). Given this magnitude of scientific uncertainty, the SSC determined that a permanent herring ABC control rule cannot be derived until a new benchmark assessment is conducted to address these issues. In the meantime, the Council recommended that Amendment 4 contain an interim ABC control rule based on the SSC's 2010–2012 herring ABC recommendation. This action establishes an interim control rule specifying that ABC be based on recent catch in the herring fishery, and that the Council determines the desired risk tolerance in setting the ABC. For example, recent catch could be the most recent catch data (single year) or an average of recent data (3-year or 5-year average). This interim ABC control rule will remain in effect until a new ABC control rule is developed. If a new ABC control rule can be developed following the 2012 benchmark stock assessment, it will be developed in the 2013–2015 herring specifications.

Accountability Measures

The MSA requires AMs to be developed in association with ACLs. AMs should minimize the frequency and magnitude of catch in excess of the ACLs (overages) and provide for subsequent harvest adjustments if ACLs are exceeded. This action designates two existing herring management measures as AMs, and establishes an additional AM that would require an overage deduction, if catch exceeds the stock-wide ACL or a sub-ACL. This action also specifies that these AMs can be modified, as necessary, through a framework adjustment to the Herring FMP or through the herring fishery specifications process.

Current herring regulations at § 648.201(a) state that, if NMFS determines catch will reach 95 percent of the TAC allocated to a management area or seasonal period, then NMFS shall prohibit vessels from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip from that area or period. The original FMP established the management area closure threshold (i.e., 95 percent of the management area TAC) to slow the herring fishery as catch approached the TAC for a management area, and intended the 5-percent buffer to account for the incidental catch of herring in other fisheries. In recognition that this measure functions as an AM, by slowing catch to prevent or minimize catch in excess of a management area or seasonal period TAC/sub-ACL, Amendment 4 designates this management area closure measure as an AM. Because the incidental catch of herring in other fisheries is typically low, if some herring discards were not accounted for in the vessel catch reports, the 5-percent buffer could also function to account for these discards. Therefore, the function of the 5-percent buffer is to account for the incidental catch of herring in other fisheries and, when appropriate, to buffer against the uncertainty associated with discard estimates.

Current Northeast multispecies regulations at § 648.86(a)(3)(ii) specify a haddock incidental catch cap to control haddock catch by herring vessels in the GOM/GB Herring Exemption Area. When the Regional Administrator has determined that the haddock incidental catch cap has been caught, all vessels issued a herring permit are prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in the GOM/GB Herring Exemption Area. Additionally, the haddock possession limit for all vessels issued All Areas or Areas ⅔ Limited Access herring permits is reduced to 0 lb (0 kg) in all of the herring management areas. Amendment 16 to the Northeast Multispecies FMP (Amendment 16) designated haddock catch in the herring fishery as a sub-ACL for the Multispecies FMP (75 FR 18262, April 9, 2010). Consistent with Multispecies Amendment 16, this action designates the haddock incidental catch cap as an AM in the Herring FMP, with the clarification that the 0-lb (0-kg) haddock possession limit does not apply to herring vessels that also possess a Northeast multispecies permit and are operating on a declared groundfish trip.

As a way to account for ACL overages in the herring fishery, this action establishes an AM that would provide for overage deductions. Once the total catch of herring for a fishing year is determined, using all available information, any ACL or sub-ACL overage would result in a reduction of the corresponding ACL/sub-ACL the following year. For example, if final accounting of the 2010 total herring catch in Area 1A, which is generally available in the spring of 2011, indicated that the Area 1A sub-ACL was exceeded by 5 mt, then, in 2012, the sub-ACL for Area 1A would be reduced by 5 mt to account for the overage that occurred during 2010. All overage deductions will be announced by NMFS in the **Federal Register** prior to the start of the fishing year. NMFS understands that the size of an overage and the frequency of overages have the potential to affect the herring stock. In the event of multiple overages, Amendment 4 provides the flexibility to re-evaluate and modify, if necessary, the ACLs/sub-ACLs and AMs consistent with National Standard 1 guidelines, during the specifications process.

Comments and Responses

NMFS received five letters during the comment period relating to the NOA for Amendment 4; one letter was from a member of the public; two letters were from non-herring, fishing industry organizations (Coalition for the Atlantic Herring Fishery's Orderly, Informed, and Responsible Long-Term Development (CHOIR), Cape Cod Commercial Hook Fisherman's Association (CCCHFA)); and two letters were from environmental advocacy groups (Oceana, Herring Alliance). An additional four letters were received on the proposed rule for Amendment 4; one letter was from the Atlantic States Marine Fisheries Commission (ASMFC), two letters were from non-herring, fishing industry organizations (CHOIR, CCCHFA), and one letter was from an environmental advocacy group (Herring Alliance). Only the comments relevant to Amendment 4 are addressed below.

Comment 1: The Herring Alliance, CCCHFA, and CHOIR expressed concern about the sufficiency of the ACLs/sub-ACLs and AMs in the amendment. They believe that existing reporting and monitoring is not adequate to track catch against ACLs/

sub-ACLs and that AMs are not adequate to prevent ACLs/sub-ACLs from being exceeded. The commenters cited recent quota overages, specifically the quota overage in Area 1B, where 138 percent of the Area 1B quota was harvested (6,014 mt) in 2010, as evidence that, absent improvements to monitoring, measures in Amendment 4 are not sufficient to track catch against ACLs and prevent ACLs from being exceeded.

Response: While alternatives for modifications to the reporting and monitoring program for herring are being developed in Amendment 5, NMFS concludes that current reporting and monitoring is sufficient to monitor catch against ACLs/sub-ACLs. Herring vessels are required to report herring catch (landings and discards) weekly. These catch reports are verified by comparing them to herring landings reported by dealers. Herring is a high-volume fishery. When there is a pulse of fishing effort on a relatively small amount of unharvested quota, as occurred in Area 1B during September 2010, the chance of a quota overage exists, regardless of reporting or monitoring tools. Amendment 4 recognizes an existing measure as a preventative AM; the measure limits herring catch (2,000 lb (907.2 kg) per trip) when a specified percentage (95 percent) of an ACL/sub-ACL is projected to be harvested. The specified percentage is adjustable and, when it is set correctly, this AM is an appropriate measure to prevent ACLs/sub-ACLs from being exceeded.

NMFS has the authority to revise reporting requirements or make inseason adjustments to ACLs/sub-ACLs as necessary. Recognizing the importance of timely catch information, NMFS will be developing a rulemaking to establish daily catch reporting for limited access herring vessels for implementation in 2011.

Comment 2: The amendment contains a reactive AM that deducts any ACL/sub-ACL overages in the fishing year following total catch determinations, but the Herring Alliance, CCCHFA, and CHOIR believe that any overages should be paid back in the year immediately following the overage.

Response: The herring fishing year extends from January to December. The herring fishery can be active in December and, as explained in the amendment, information on the bycatch of herring in other fisheries is not finalized until the spring of the following year. For these reasons, and to provide sufficient notice to the industry when an ACL/sub-ACL is reduced due to an overage, NMFS concludes that it is appropriate that the amendment establishes a payback measure for the fishing year following the total catch determination (e.g., overages in 2010 would be determined in 2011 and paid back in 2012). (See also the response to Comment 3.)

Comment 3: The Herring Alliance commented that delaying overage deductions may transfer accountability for overages to those not responsible for causing overages, because active participation in the fishery can change over time, and that ecological harm could result from unnecessary "balloon payments" due to overage rollovers. The CCCHFA commented that delaying overage deductions may cause harm to the stock.

Response: Since the implementation of limited access in 2007, active participation in the herring fishery has been relatively stable. Market conditions and the availability of herring to the fishery drive participation in the herring fishery, but it is unlikely that, in a given year, these factors would prevent a portion of the fleet from participating in the fishery. Generally, there is no danger to the stock associated with "balloon payments" resulting from overage rollovers, because overages, if there are any, would be consistently deducted from ACLs/sub-ACLs for the fishing year following total catch determination. Herring is a relatively long-lived species (over 10 years) and multiple year classes are harvested by the fishery (typically ages two through six). These characteristics suggest that the herring stock may be robust to a single year delay in overage deductions (i.e., overage deduction in 2012 versus 2011). There is no evidence that a single year delay is more likely to affect the reproductive potential of the stock than an overage deduction in the year immediately following the overage, particularly since the herring stock is not overfished at this time. However, NMFS understands that the health of a stock, size of an overage, and the frequency of overages could combine to affect the stock in the future. In the event that these factors combine to create a negative impact on the stock, Amendment 4 provides the flexibility to re-evaluate and modify ACLs/sub-ACLs and AMs, consistent with National Standard 1 guidelines, during the specifications-setting process.

Comment 4: The Herring Alliance and CCCHFA expressed concern about the adequacy of the interim ABC control rule in the amendment. The Herring Alliance also believes the Council should have stated its policy on the risk of overfishing in the control rule, and that it is inappropriate to establish an updated control rule via the specifications process. Additionally, the Herring Alliance commented that, in the absence of a permanent ABC control rule, the final rule must specify a time frame and mechanism for replacing the interim control rule with a permanent control rule.

Response: Due to the scientific uncertainty associated with the 2009 herring stock assessment, the SSC determined that a permanent ABC control rule cannot be determined at this time. Therefore, Amendment 4 contains an interim ABC control rule (based on SSC recommendations) until the next herring benchmark assessment (currently scheduled for June 2012) determines if it can address the concerns with the last assessment. If a new ABC control rule can be developed following the 2012 benchmark stock assessment, it will be developed in the 2013–2015 herring specifications. The amendment does contain a default risk policy; the Council's default policy on the risk of overfishing is the amount of buffer between the Council's OFL and ABC recommendations for 2010–2012. This risk policy will be updated when the control rule is updated. Regarding the mechanism to update the control rule, the SSC makes ABC recommendations as part of the specifications process, and it is appropriate that this amendment provides the flexibility to update the control rule through that process.

Comment 5: The Herring Alliance, CHOIR, and CCCHFA all expressed concern about the accounting of herring discarded at sea. The commenters believe that the final rule must include protocols for quantifying herring discards as part of management uncertainty and a mechanism to offset the ACL from the ABC accordingly. Additionally, absent improved monitoring, the commenters doubt the credibility of the discard data and conclusions that herring discards are low.

Response: As described in the proposed rule, estimates of discards are reported by harvesters, and also provided by NMFS observers, on trips when observers are present. The available information suggests that discards in the herring fishery are low, relative to the amount of landed herring. Therefore, based on the best available information, Amendment 4 does not establish a specific deduction between the ABC and stock-wide ACL to account for management uncertainty related to discards at this time. However, if new information on discards becomes available, Amendment 4 provides the Council with flexibility to incorporate

that information into the stock-wide ACL-setting process, as appropriate. Additionally, as described previously, the Council is in the process of developing Amendment 5, which considers revisions to catch monitoring and reporting requirements for the herring fishery.

Comment 6: Following up on their concern with the accounting of discards, CHOIR and CCCHFA commented on a perceived discrepancy between the amendment and the proposed rule. They commented that the amendment describes the buffer (i.e., 5 percent of a management area sub-ACL) associated with the management area closure measure as a measure to buffer against the uncertainty associated with discard estimates while the proposed rule describes the buffer as a measure intended to address incidental catch. The commenters then questioned how the 5-percent buffer was intended to function.

Response: Proposed regulations state that, if NMFS projects that catch will reach 95 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip per day for that area. The original FMP established the management area closure threshold (i.e., 95 percent of the management area sub-ACL) to slow the herring fishery as catch approached the TAC for a management area, and intended the 5-percent buffer to account for the incidental catch of herring in other fisheries. Amendment 4 maintains this function of the buffer, as described in both the proposed rule and the amendment. Additionally, because the incidental catch of herring in other fisheries is typically low, if some discards were not accounted for in the vessel catch reports, the 5-percent buffer could also function to account for these discards, as described in the amendment. Because the amendment describes that the intent of the 5-percent buffer is to account for the incidental catch of herring in other fisheries and to buffer against the uncertainty associated with discard estimates, this final rule clarifies that the buffer associated with the management area closure measure has both functions.

Comment 7: The Herring Alliance commented that Amendment 4 should establish ACLs and AMs for river herring and shad, and suggested a Federal FMP is necessary for these species.

Response: In June 2009, the Council focused Amendment 4 on bringing the Herring FMP into compliance the ACL and AM requirements by 2011. When considering the development of a Federal FMP for river herring and shad, the analysis would have to take into account the benefits of the FMP versus the costs and the need for a Federal plan, given that ASMFC has an Interstate FMP for river herring and shad. Because there was not time to conduct these types of analyses and implement Amendment 4 by 2011, creating a Federal FMP for river herring and shad was outside the scope of this amendment. Additionally, an ASMFC river herring stock assessment is currently scheduled for 2011. In advance of stock status information, it would be difficult for a Federal FMP to detail how it would prevent overfishing on river herring. In the absence of Federal management for river herring and shad, the MSA does not require ACLs and AMs for these species.

Comment 8: One member of the public and the Herring Alliance commented on the National Environmental Policy Act (NEPA) requirements and questioned the Council's decision to conduct an EA for Amendment 4. The Herring Alliance believes that ABCs, ACLs, and AMs need to be analyzed in an environmental impact statement (EIS), and that it is unlawful to separate Amendment 4 from Amendment 5 because single actions must be analyzed together so as to not obscure the true environmental impacts.

Response: The scope and effect of Amendment 4 is primarily administrative in nature, as it modifies the process for setting specifications, but does not implement the actual specifications (e.g., ABC, ACL). Therefore, for this reason and the analyses contained in the EA, the Finding of No Significant Impact was justified in determining that an EIS was not necessary or appropriate. Amendment 4 and Amendment 5 are separate actions; therefore, it is both appropriate and lawful to analyze them as separate actions, recognizing that Amendment 5 is considered in Amendment 4's cumulative effects analysis as a future action, and Amendment 4 will be considered in the cumulative effects analysis of Amendment 5 as a past action.

Comment 9: The CCCHFA commented that the analysis in the EA prepared for Amendment 4 was flawed because it concluded that exceeding 95 percent of a sub-ACL is unlikely, and it did not analyze the effects of not designating river herring as non-target stock in the fishery.

Response: Between 2001 and 2009, herring catch (reported by vessels) exceeded management area closure thresholds (i.e., 95 percent of the TAC for a management area) on eight occasions (less than 25 percent of the time). To explain, the 4 herring management areas were monitored over 9 years, for a total of 36 management area thresholds, and those thresholds were exceed 8 times. NMFS believes it is appropriate to consider an event that occurs less than 25 percent of the time unlikely. National Standard 1 guidelines specify that Councils are to reconsider their ACLs, if those ACLs are consistently exceeded. Amendment 4 provides the flexibility to re-evaluate and modify, if necessary, ACLs/sub-ACLs and AMs during the specification process. Additionally, as described previously, the amendment contains an AM that requires any ACL/sub-ACL overages to be deducted in the year following total catch accounting. Designating river herring as a stock in the fishery was not considered by the Council in Amendment 4 nor was it representative of status quo; therefore, it is not required to be analyzed in the EA.

Comment 10: Language in the proposed rule states that, if the amendment is effective prior to final catch accounting for 2010, any overage in 2010 would be deducted in 2012. The CCCHFA questioned whether or not 2010 overages would be deducted in 2012 if the amendment was not effective prior to final catch accounting for 2010.

Response: Catch accounting for 2010 will be finalized in 2011; therefore, any 2010 ACL/sub-ACL overages will be deducted from the corresponding ACL/sub-ACL in 2012.

Comment 11: CCCHFA commented that it is concerned with how the role of herring as forage is considered in Amendment 4. CHOIR commented that it was pleased that the proposed rule provides for the consideration of the role of herring as forage during the specifications-setting process, but that it is disappointed that this consideration is not required.

Response: This action provides for consideration of the role of herring as forage, as appropriate. NMFS believes it is sufficient that herring as forage can be considered by the SSC when it recommends ABC, and the Council has the ability to establish an additional buffer between ABC and OY to address herring as forage, and that a regulatory requirement is not necessary.

Comment 12: The Herring Alliance, CCCHFA, and Oceana all commented that Amendment 4 should have

considered additional species to be designated as "non-target stocks in the fishery," including river herring, shad, haddock, mackerel, and spiny dogfish. Oceana also commented that the bycatch analysis in Amendment 4 is insufficient.

Response: NMFS disagrees with these comments. National Standard 1 guidelines state that designations for non-target stocks in the fishery are at the Council's discretion, and the Council chose not to designate any species as "non-target stocks in the fishery" in this amendment. Amendment 4 includes NMFS observer information on all species caught and discarded on observer trips and considers the effects of this action on non-herring species. Incidental catch in the herring fishery counts against the ACLs established for these incidental catch species if they are managed under another Federal FMP. Additionally, as described previously, Amendment 5 is further considering interactions between the herring fishery and river herring.

Comment 13: The Herring Alliance, CCCHFA, and CHOIR commented that they support the proposed rule requirements to set sub-ACLs and AMs for the herring management areas.

Response: NMFS concurs.

Comment 14: The ASMFC commented that it supports measures in the proposed rule. ASMFC developed Addendum II to Amendment 2 to the Interstate FMP for Atlantic Herring to complement Amendment 4. ASMFC commented that any changes to the proposed rule may create inconsistent management between state and Federal management programs.

Response: NMFS concurs.

Changes From the Proposed Rule

There are no substantive changes from the proposed rule, only clarifications to the possession limits associated with the management area closure AM (2,000 lb (907.2 kg)), limited access incidental catch permit (55,000 lb (25 mt)), and open access permit (6,600 lb (3 mt)).

Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 4 is necessary for the conservation and management of the herring fishery and that it is consistent with the MSA and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Orders 12866 and 13563.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA and NMFS responses to those comments, and analyses contained in Amendment 4 and its accompanying EA/RIR/IRFA. Copies of these analyses are available from the Council or NMFS (*see* **ADDRESSES**).

Statement of Need

This action brings the Herring FMP into compliance with MSA requirements, specifically those requiring ACLs and AMs. A description of action, why it was considered, and the legal authority for the action is contained in the preamble and not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Nine comment letters were received during the comment periods on the NOA and proposed rule, but none of the comments were specifically directed to the IRFA.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

All participants in the herring fishery are small entities, as none grossed more than $ 4 million annually; therefore, there are no disproportionate economic impacts on small entities. This action will affect all participants in the herring fishery, as it revises current definitions and the specifications-setting process in the Herring FMP, but these measures are not anticipated to have direct economic impacts. In 2009, there were 41 vessels issued All Areas Limited Access Permits, 4 vessels issued Areas 2 and 3 Limited Access Permits, 54 vessels issued Limited Access Incidental Catch Permits, and 2,272 vessels issued Open Access Permits. Section 6.2 in Amendment 4 describes the vessels, key ports, and revenue information for the herring fishery; therefore, that information is not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The measures in this action are not anticipated to have direct economic effects on herring fishery participants. The scope and effect of Amendment 4 is primarily administrative in nature, as it modifies the process for setting specifications, but does not implement the actual specifications (*e.g.,* ABC, ACL). A detailed economic analysis of the measures, as well as the non-selected alternatives, is in Section 7.2 of Amendment 4. These measures bring the Herring FMP into compliance with new MSA requirements by revising current definitions and the specification-setting process to include ACLs and AMs. In addition, this action designates herring as a "stock in the fishery;" establishes an interim ABC control rule; and makes adjustments to the specification process by eliminating JVPt, including JVP and IWP, and reserve from the specifications process, and eliminating the Council's consideration of TALFF. The alternative to these measures is the status quo, which would retain all current definitions and the current specification process.

The current Herring FMP contains a specification-setting process and measures to prevent overfishing. This action re-defines: The specification-setting process to include OFL, ABC, and ACL; the allocating of OY; the management area TACs as sub-ACLs; and the management area closure measure and haddock incidental catch cap as AMs. Additionally, this action establishes an AM that provides for an overage deduction if total catch exceeded an ACL/sub-ACL. Because this action only makes minor adjustments to the existing specification-setting process and measures that prevent overfishing, this action has no direct economic effects. However, when the actual specifications are set, using the process implemented by this action, an economic analysis will be conducted. By revising the specifications-setting process to make the process, and the SSC's involvement in the process, more explicit and providing for overage deductions, this action has the potential

to better prevent overfishing, as compared to the non-selected, status quo alternative.

Designating herring as the stock in the fishery is administrative. While other species are caught incidentally when fishing for herring, Atlantic herring is the only stock directly managed by the Herring FMP. National Standard 1 guidelines state that designations for non-target stocks in the fishery are at the Council's discretion, and the Council chose not to designate any species as "non-target stocks in the fishery" in this amendment. Because there may be non-target stocks that warrant consideration in the future, the Council retains authority to designate additional stocks in the fishery in a future action. Designating herring as the stock in the fishery will not change how the current FMP operates; therefore, there are no economic differences between this action and the non-selected, status quo alternative.

As described previously, the current Herring FMP contains a specifications-setting process and measures to prevent overfishing. Therefore, establishing an ABC control rule in this action is similar to the non-selected, status quo, alternative. However, making the ABC-setting process, and the SSC's involvement in that process, explicit has the potential to better prevent overfishing, as compared to the non-selected, status quo alternative.

This action eliminates JVPt, including JVP and internal waters processing IWP, and reserve from the specifications process. Because the U.S. herring fishery has experienced growth in both harvesting and processing capacity, and has sufficient capacity to harvest the available yield, JVPt, including JVP and IWP, has been allocated at zero since 2005. Accordingly, there are no economic differences between this action and the non-selected, status quo alternative. Historically, the reserve was specified to buffer against such things as uncertainty in stock size estimates, uncertainty in Canadian catch, excess U.S. capacity entering the herring fishery, and fluctuations in import/export demand. With this action's consideration of OFL, ABC, and ACL to account for sources of scientific and management uncertainty, specifying a reserve is redundant; therefore, there is no economic difference between this action and the non-selected, status quo alternative. Additionally, while TALFF could still be awarded, consistent with the MSA, by the Secretary of Commerce, this action eliminates Council consideration of TALFF during development of the specifications. Like JVPt, TALFF has been specified at zero since 2005. Because there is no functional difference between not considering TALFF and setting TALFF at zero, there are no economic differences between this action and the non-selected, status quo alternative.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 25, 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 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.200, paragraphs (a) introductory text, (b)(1), (b)(2), (b)(3), (b)(4), (e), and (f) introductory text are revised, and paragraphs (b)(5) and (g) are added to read as follows:

§ 648.200 Specifications.

(a) The Atlantic Herring Plan Development Team (PDT) shall meet at least every 3 years, but no later than July of the year before new specifications are implemented, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for a period of 3 years for consideration by the New England Fishery Management Council's Atlantic Herring Oversight Committee: Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limit (ACL), Optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), U.S. at-sea processing (USAP), border transfer (BT), the sub-ACL for each management area, including seasonal periods as specified at § 648.201(d) and modifications to sub-ACLs as specified at § 648.201(f), and the amount to be set aside for the RSA (from 0 to 3 percent of the sub-ACL from any management area). Recommended specifications shall be presented to the New England Fishery Management Council (Council).

* * * * *

(b) * * *

(1) OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is usually the fishing rate supporting maximum sustainable yield (F_{MSY}). Catch that exceeds this amount would result in overfishing.

(2) ABC must be equal to or less than the OFL. The Council's Scientific and Statistical Committee (SSC) shall recommend ABC to the Council. Scientific uncertainty, including, but not limited to, uncertainty around stock size estimates, variability around estimates of recruitment, and consideration of ecosystem issues, shall be considered when setting ABC. If the stock is not overfished and overfishing is not occurring, then ABC may be based on F_{MSY} or its proxy, recent catch, or any other factor the SSC determines appropriate. If the stock is overfished, then ABC may be based on the rebuilding fishing mortality rate for the stock (F_{REB}), or any other factor the SSC determines appropriate.

(3) ACL must be equal to or less than the ABC. Management uncertainty, which includes, but is not limited to, expected catch of herring in the New Brunswick weir fishery and the uncertainty around discard estimates of herring caught in Federal and state waters, shall be considered when setting the ACL. Catch in excess of the ACL shall trigger accountability measures (AMs), as described at § 648.201(a).

(4) OY may not exceed OFL (*i.e.,* MSY) and must take into account the need to prevent overfishing while allowing the fishery to achieve OY on a continuing basis. OY is prescribed on the basis of MSY, as reduced by social, economic, and ecological factors. OY may equal DAH.

(5) DAH is comprised of DAP and BT.

* * * * *

(e) *In-season adjustments.* The specifications and sub-ACLs established pursuant to this section may be adjusted by NMFS to achieve conservation and management objectives, after consulting with the Council, during the fishing year in accordance with the Administrative Procedure Act (APA). Any adjustments must be consistent with the Atlantic Herring FMP objectives and other FMP provisions.

(f) *Management areas.* The specifications process establishes sub-ACLs and other management measures for the three management areas, which may have different management measures. Management Area 1 is subdivided into inshore and offshore sub-areas. The management areas are defined as follows:

* * * * *

(g) All aspects of AMs, as described at § 648.201(a), can be modified through the specifications process.

■ 3. Section 648.201 is revised to read as follows:

§ 648.201 AMs and harvest controls.

(a) *AMs.* (1) *Management area closure.* If NMFS projects that catch will reach 95 percent of the annual sub-ACL allocated to a management area before the end of the fishing year, or 95 percent of the Area 1A sub-ACL allocated to the first seasonal period as set forth in paragraph (d) of this section, NMFS shall prohibit vessels, beginning the date the catch is projected to reach 95 percent of the sub-ACL, from fishing for, possessing, catching, transferring, or landing >2,000 lb (907.2 kg) of Atlantic herring per trip in such an area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(2) *Haddock incidental catch cap.* If NMFS determines that the incidental catch cap for haddock in § 648.85(d) has been caught, all vessels issued an Atlantic herring permit or fishing in the Federal portion of the Gulf of Maine/Georges Bank (GOM/GB) Herring Exemption Area, defined at § 648.85(a)(3)(ii)(A)(*1*), shall be prohibited from fishing for, possessing, or landing herring in excess of 2,000 lb (907.2 kg) per trip in or from the GOM/GB Herring Exemption Area. This prohibition shall not apply unless all herring possessed and landed by a vessel were caught outside the GOM/GB Herring Exemption Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the Exemption Area. Upon this determination, the haddock possession limit shall be reduced to 0 lb (0 kg) for all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, regardless of where they were fishing, unless the vessel also possesses a Northeast Multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip. NMFS shall implement the described fishing restrictions in accordance with the APA.

(3) *ACL overage deduction.* If NMFS determines that total catch exceeded any ACL or sub-ACL for a fishing year, then the amount of the overage shall be subtracted from that ACL or sub-ACL for the fishing year following total catch determination. NMFS shall make such determinations and implement any changes to ACLs or sub-ACLs, in accordance with the APA, through notification in the **Federal Register**, prior to the start of the fishing year, if possible, during which the reduction would occur.

(b) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with > 2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(c) A vessel may land in an area that is limited to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section with >2,000 lb (907.2 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as required by § 648.23(b), and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(d) The sub-ACL for Management Area 1A is divided into two seasonal periods. The first season extends from January 1 through May 31, and the second season extends from June 1 through December 31. Seasonal sub-ACLs for Area 1A, including the specification of the seasonal periods, shall be set through the annual specification process described in § 648.200.

(e) Up to 500 mt of the Area 1A sub-ACL shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 44° 36.2 N. Lat. and 67° 16.8 W. long (Cutler, Maine). This set-aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the sub-ACL allocation for Area 1A.

(f) If NMFS determines that the New Brunswick weir fishery landed less than 9,000 mt through October 15, NMFS shall allocate an additional 3,000 mt to the Area 1A sub-ACL in November, in accordance with the APA.

■ 4. In § 648.204, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), and (a)(4) are revised to read as follows:

§ 648.204 Possession restrictions.

(a) A vessel must be issued and possess a valid limited access herring permit to fish for, possess, or land more than 6,600 lb (3 mt) of Atlantic herring from any herring management area in the EEZ, provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(1) A vessel issued an All Areas Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction from any of the herring management areas defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

(2) A vessel issued only an Areas 2 and 3 Limited Access Herring Permit may fish for, possess, or land Atlantic herring with no possession restriction only from Area 2 or Area 3 as defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201. Such a vessel may fish in Area 1 only if issued an open access herring permit or a Limited Access Incidental Catch Herring Permit, and only as authorized by the respective permit.

(3) A vessel issued a Limited Access Incidental Catch Herring Permit may fish for, possess, or land up to 55,000 lb (25 mt) of Atlantic herring in any calendar day, and is limited to one landing of herring per calendar day, from any management area defined in § 648.200(f), provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area.

(4) A vessel issued an open access herring permit may fish for, possess, or land up to 6,600 lb (3 mt) of Atlantic herring from any herring management area per trip, and is limited to one landing of herring per calendar day, provided that the area has not been closed due to the attainment of 95 percent of the sub-ACL allocated to the area, as specified in § 648.201.

* * * * *

■ 5. In § 648.206, paragraphs (b)(8), (b)(25), (b)(28), and (b)(30) are revised, and paragraph (b)(31) is added to read as follows:

§ 648.206 Framework provisions.

* * * * *

(b) * * *

(8) Distribution of the ACL;

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(25) In-season adjustments to ACLs;

* * * * *

(28) ACL set-aside amounts, provisions, adjustments;

* * * * *

(30) AMs; and

(31) Any other measure currently included in the FMP.

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■ 6. In § 648.207, paragraph (g) is revised to read as follows:

§ 648.207 Herring Research Set-Aside (RSA).

* * * * *

(g) If a proposal is approved, but a final award is not made by NMFS, or if NMFS determines that the allocated RSA cannot be utilized by a project, NMFS shall reallocate the unallocated or unused amount of the RSA to the respective sub-ACL, in accordance with the APA, provided that the RSA can be available for harvest before the end of the fishing year for which the RSA is specified.

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[FR Doc. 2011–4726 Filed 3–1–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 090428799–9802–01]

RIN 0648–BA57

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Inseason Adjustments to Fishery Management Measures

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule makes inseason adjustments to commercial and recreational fishery management measures for several groundfish species taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) March 1, 2011. Comments on this final rule must be received no later than 5 p.m., local time on April 1, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648–BA57, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* 206–526–6736, *Attn:* Gretchen Hanshew.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, *Attn:* Gretchen Hanshew.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew (Northwest Region, NMFS), 206–526–6147, *fax:* 206–526–6736, *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's (the Council or PFMC) Web site at *http://www.pcouncil.org/.*

Background

On December 31, 2008, NMFS published a proposed rule to implement the 2009–2010 specifications and management measures for the Pacific Coast groundfish fishery (73 FR 80516). The final rule to implement the 2009–2010 specifications and management measures for the Pacific Coast Groundfish Fishery was published on March 6, 2009 (74 FR 9874). The final rule was subsequently amended by inseason actions on the following dates: April 27, 2009 (74 FR 19011); July 6, 2009 (74 FR 31874); October 28, 2009 (74 FR 55468); February 26, 2010 (75 FR 8820); May 4, 2010 (75 FR 23620); July 1, 2010 (75 FR 38030); July 16, 2010 (75 FR 41386); August 23, 2010 (75 FR 51684); October 4, 2010 (75 FR 61102); and December 3, 2010 (75 FR 75417). Additional changes to the 2009–2010 specifications and management measures for petrale sole were made in two final rules on November 4, 2009 (74 FR 57117), and December 10, 2009 (74 FR 65480). NMFS also issued a final rule in response to a duly issued court order on July 8, 2010 (75 FR 39178). In addition, NMFS issued two final rules to implement Amendments 20 and 21 to the FMP on October 1, 2010 (75 FR 60868), and December 15, 2010 (75 FR 78344). The October 1, 2010, final rule, in part, re-organized the entire Pacific Coast Groundfish Fishery Regulations. Because of the restructuring, beginning on November 1, 2010, these specifications and management measures are found at 50 CFR part 660, subparts C through G.

In June 2010, the Council recommended, and NMFS is working to implement, specifications and management measures for the 2011–2012 biennium. Given the complexity of the biennial specifications and management measures, the need for adequate National Environmental Policy Act documents and public review periods, and competing workloads, NMFS did not have enough time to implement a final rule by January 1, 2011. Unless new management measures are implemented in a separate rulemaking, groundfish specifications and management measures that are in effect at the end of the previous biennial fishing period will remain in effect until they are modified, superseded, or rescinded. On December 30, 2010, NMFS issued an emergency rule to revise some harvest specifications and management measures, including several pieces necessary to sustainably manage the entire fishery and to begin the rationalized trawl fishery (75 FR 82296). Therefore, with the exception of changes implemented in the December 30, 2010, emergency rule, the 2009–2010 harvest specifications are in effect and the management measures that were in place at the end of the 2009–2010 biennium will remain in effect for the start of the 2011 fisheries (*e.g.,* January–February 2010 trip limits would remain in effect for January–February 2011).

NMFS raised these issues to the Council at its November 2–9, 2010, meeting in Costa Mesa, California. The Council recommended adjusting the groundfish management measures to respond to updated fishery information and other inseason management needs.

The Council considered the most recent 2010 fishery information, relative to 2010 specifications, and recommended inseason modifications

appropriate for 2011 to start 2011 fisheries in a manner that would keep catches below 2010 OYs, but would allow harvest opportunities for species with catches tracking below projections during the 2010 fishery. The Council also considered adjustments to early 2011 groundfish management measures to respond to the upcoming new, lower sablefish harvest level for the area north of 36° N. lat. that was implemented by NMFS on December 30, 2010 (75 FR 82296). These changes include: Reduction to cumulative limits in the limited entry fixed gear primary sablefish fishery that operates in the area north of 36° N. lat.; reduction to trip limits for sablefish in the open access fisheries; increases to trip limits for sablefish in the limited entry fixed gear daily trip limit fisheries; and decreasing the groundfish bag limit and modifying the lingcod season start date in Washington recreational fisheries.

Management measures are designed to meet the FMP objective of achieving, to the extent possible, but not exceeding, OYs of target species, while fostering the rebuilding of overfished stocks by remaining within their rebuilding OYs. All of the fishery mortality early in 2011 will be taken into account during the rest of the year, and will count toward the final harvest specifications that will ultimately be implemented for 2011.

Changes to the groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its November 2–10, 2010, meeting in Costa Mesa, CA.

NMFS and the Council, therefore, developed management measures, to be implemented through a routine inseason adjustment, based on the most recent fishery information, to: Manage within the current OYs and the new, lower, sablefish harvest level north of 36° N. lat.

Sablefish North of 36° N. Lat.

At the Council's November 2010 meeting, NMFS informed the Council that it intended to publish an emergency rule to lower the sablefish harvest level for the area north of 36° N. lat. beginning January 1, 2011 as an interim measure until the final harvest specifications and management measures for 2011 are implemented later in the year. The reduction in the sablefish harvest level was necessary to prevent conservation and management concerns with the issuance of trawl fishery quota pounds. Also, the interim reduction to the harvest level allows NMFS to calculate the fixed gear primary sablefish fishery tier limits for 2011 at a level that will reduce concerns for overfishing. NMFS and the Council developed management measures, to be implemented through this inseason rule based on the most recent fishery information, to manage within the new, lower, sablefish harvest level north of 36° N. lat. As a result, the Council recommended changes to sablefish daily trip limits (DTLs) in the limited entry fixed gear and open access fisheries north of 36° N. lat.

No changes to groundfish fishery harvest specifications, including acceptable biological catches (ABCs), optimum yields (OYs), and harvest guidelines (HGs) are made by this inseason action.

Limited Entry Fixed Gear Sablefish Primary Fishery North of 36° N. Lat.

As described above, based on the lower interim harvest level for sablefish north of 36° N. lat. that is in place as of January 1, 2011, NMFS is implementing the following decrease in the annual tier limits for sablefish for 2011 and beyond: From Tier 1 at 56,081–lb (25,437 kg), Tier 2 at 25,492–lb (11,562 kg), and Tier 3 at 14,567–lb (6,648 kg); to Tier 1 at 41,379 lb (18,769 kg), Tier 2 at 18,809 lb (8,532 kg), and Tier 3 at 10,748 lb (4,875 kg).

Sablefish Daily Trip Limit Fishery North of 36° N. Lat.

As described above, based on the reduced sablefish harvest specification for the area north of 36° N. lat., the Council considered modifications to the 2011 sablefish trip limits for the limited entry fixed gear and open access DTL fisheries north of 36° N. lat. at their November 2010 meeting to keep projected impacts within the new, lower harvest specification. In addition to the new sablefish harvest specification, these modifications were also considered in light of the performance of the 2010 fishery, where trip limits were increased inseason because catches during 2010 were lower than anticipated north of 36° N. lat. (75 FR 51684, August 23, 2010). Projected catch of sablefish in the 2011 limited entry fixed gear and open access DTL fisheries north of 36° N. lat. are anticipated to be above their new, lower, 2011 sablefish allocations. Based on the most recent fishery information, if no action is taken the trip limits that were in place in 2010 are left in place for 2011, landings of sablefish through the end of the year are projected to be: 298 mt, or 106 percent of the limited entry fixed gear sablefish DTL fishery allocation of 282 mt; and 536 mt, or 115 percent of the open access fishery sablefish allocation of 464 mt. The Council considered options for trip limit decreases in the limited entry fixed gear and open access sablefish DTL fisheries north of 36° N. lat. to allow these fisheries to still attain their sablefish allocations, while keeping total projected catch below the new, lower 2011 sablefish harvest levels for the area north of 36° N. lat. For the limited entry fixed gear sablefish DTL fishery, the Council considered that weekly trip limits in this fishery appear to have a low impact on total landings, and that the primary control for total landings is tied to the bi-monthly cumulative trip limits. Therefore, the Council considered establishing a weekly limit at a level of no less than 25 percent of the bi-monthly cumulative trip limit so that four trips could achieve the bi-monthly limit. This would improve efficiency and could also improve safety by allowing attainment of the bi-monthly limit in fewer trips if weather is bad.

The overall harvest levels of sablefish in the limited entry fixed gear and open access fisheries north of 36° N. lat. are anticipated to decrease with the changes to the bi-monthly trip limits that are described below. Therefore, projected impacts to co-occurring overfished species in the limited entry fixed gear and open access fisheries are not anticipated to increase. The total projected impacts to darkblotched rockfish in the limited entry fixed gear and open access fisheries are very low.

Based on the considerations outlined above, the Council recommended and NMFS is implementing the following changes to trip limits in the limited entry fixed gear sablefish DTL fishery north of 36° N. lat.: An increase in the weekly limits north of 36° N. lat. from "1,750 lb per week" to "2,000 lb per week" beginning on March 1 through the end of the year; a decrease in the bi-monthly cumulative trip limits from "8,500 lb per week" to "8,000 lb per week" from July 1 through October 31. See these new limits in Table 2 (North) and 2 (South) to part 660, subpart E.

Based on the considerations outlined above, the Council also recommended and NMFS is implementing the following changes to the open access sablefish DTL fishery trip limits north of 36° N. lat.: Increase the weekly limit from "1 landing per week of up to 800 lb" to "1 landing per week of up to 950 lb" from March 1 through June 30; increase the weekly limit from "1 landing per week of up to 950 lb" to "1 landing per week of up to 1,200 lb" from July 1 through the end of the year; decrease the bi-monthly cumulative trip limit from "2,400 lb per 2 months" to "1,900 lb per 2 months" from March 1

through June 30; and decrease the bi-monthly cumulative trip limit from "2,750 lb per 2 months" to "2,250 lb per 2 months" from July 1 through the end of the year. See these new limits in Table 3 (North) and 3 (South) to part 660, subpart F.

Sablefish DTL Fishery South of 36° N. Lat.

During 2010, catch of sablefish in the limited entry fixed gear and open access DTL fisheries south of 36° N. lat. was higher than anticipated. In September and December 2010, the Council recommended and NMFS implemented decreases to sablefish trip limits in the limited entry fixed gear fishery, and more substantial decreases to the open access sablefish trip limits, including a closure of the sablefish fishery for December 2010 (75 FR 61102, October 4, 2010; 75 FR 75417, December 3, 2010). The changes were anticipated to lower the projected impacts and keep projected impacts within the sablefish OY south of 36° N. lat. At their November 2010 meeting, the Council considered the fishery performance in 2010 where increased effort and fishery participation was seen, particularly in the open access fishery. The Council considered the need for designing trip limits in both the limited entry fixed gear and open access sablefish DTL fisheries for 2011 that are anticipated to keep catch below the sablefish harvest level for south of 36° N. lat. The Council also considered designing trip limits for the two commercial non-trawl sectors that would be anticipated to allow slightly more overall harvest of sablefish by the limited entry fixed gear fishery. In light of the 2010 fishery performance, a restructuring of the sablefish trip limits for the non-trawl commercial fisheries south of 36° N. lat. was designed in an effort to: Balance the higher than anticipated harvest of sablefish by the open access fishery; prevent premature closure of fisheries in 2011 and prevent exceeding the OY.

West Coast Groundfish Observer data indicate that impacts to overfished species in the commercial fixed gear sablefish fisheries south of 36° N. lat. are extremely low. Therefore, decreases to trip limits to keep projected impacts below the 2011 sablefish harvest levels are not anticipated to result in changes to impacts to co-occurring overfished groundfish species.

Based on the considerations outlined above, the Council recommended and NMFS is implementing a restructured and slightly higher weekly trip limit in the limited entry fixed gear sablefish DTL fishery cumulative limits south of 36° N. lat. of "2,100 lb per week" beginning on March 1 through the end of the year.

Based on the considerations outlined above, the Council recommended and NMFS is implementing restrictions to the open access sablefish DTL fishery trip limits south of 36° N. lat. as follows: From "400 lb per day, or 1 landing per week of up to 1,500 lb, not to exceed 8,000 lb per 2 months" to "300 lb per day, or 1 landing per week of up to 1,200 lb, not to exceed 2,400 lb per 2 months" from March 1 through the end of the year.

Recreational Fishery Management Measures

In June 2010 the Council recommended that NMFS implement several changes to Washington, Oregon, and California's recreational fishery management measures for groundfish for the 2011 and beyond fishing seasons as part of the biennial harvest specifications and management measures process. The 2011–2012 harvest specifications and management measures have been delayed and will not be in place for the start of the 2011 recreational groundfish fisheries. As a result of this delay, the recreational fishery management measures that were implemented during 2010 will remain in place for the start of 2011, until NMFS takes action through a rulemaking to revise them. At their November 2010 meeting, the Council requested that NMFS consider implementing changes to recreational fishery management measures via NMFS' routine inseason management authority, where possible. Regulations at 50 CFR part 660.60(c) describe what types of changes to management measures are designated "routine" for the West Coast groundfish fishery. Not all changes to management measures that were requested by the Council at their November 2010 meeting are implemented in this rule. However, two changes to recreational groundfish fishery management measures are made in this rule and are described below.

During 2010, the Groundfish Management Team, an advisory body to the Council, conducted an analysis of recent Washington recreational fishery data and determined that very few recreational anglers were attaining the 15-fish bag limit for groundfish off the Washington coast. The analysis of 2008 and 2009 data showed that 99.9 percent of anglers were not retaining more than a 12-fish bag limit. To align the recreational groundfish bag limits with recent catches, the Council recommended reducing the recreational groundfish bag limit off Washington from 15 fish to 12 fish, beginning in 2011. Bag limits in the recreational groundfish fisheries are designated as a routine management measure and may be changed rapidly after a single Council meeting, and this change to management measures will maintain consistency with state regulations. Therefore, NMFS is implementing a reduction in the Washington recreational groundfish bag limit from 15 fish to 12 fish, beginning on March 1, 2011.

In recent years the Washington recreational fishery for lingcod in the area between Cape Alava (48°10′ N. lat.) and the Washington/Oregon border (46°16′ N. lat.) (e.g., Marine Areas 1–3) opens each year on the Saturday that falls closest to March 15. A majority of recreational fishing trips off the Washington coast occur on weekends during this time of year. Opening the fishery on a Saturday rather than on a Sunday allows an additional day of lingcod fishing when the seasons for salmon and Pacific halibut are not yet open. During the last three biennial harvest specifications and management measures cycles the season opening dates are simply updated so that the lingcod season opening dates in this area fall on the Saturday that falls closest to March 15. For 2010, the season opening date was March 13 and this is the date that continues to be in the Washington recreational fishery regulations for this area for 2011. Based on a Council recommendation to maintain the Washington recreational lingcod fishing opportunities, the Washington Department of Fish and Wildlife requested that NMFS update the lingcod season start dates for 2011 so that they fall on the Saturday closest to March 15. For 2011, this date is March 12. Changes to recreational fishery seasons are designated as a routine management measure and maybe changed rapidly after a single Council meeting. Therefore, NMFS is implementing a change in the season start date in the Washington recreational fishery for lingcod in Marine Areas 1–3 from March 13 to March 12, beginning on March 1, 2011.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

These actions are taken under the authority of 50 CFR 660.60(c) and are exempt from review under Executive Order 12866.

These inseason adjustments are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (*see* **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to biennial groundfish management measures under 5 U.S.C. 553(b)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its November 2–10, 2010, meeting in Costa Mesa, CA. The Council recommended that these changes be implemented by January 1, 2011 or as quickly as possible thereafter. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science to approach, without exceeding, the OYs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California and recreational fisheries off Washington.

Changes to sablefish trip limits for the remainder of the biennial period in the limited entry fixed gear and open access sablefish DTL fisheries and to sablefish cumulative limits in the primary fishery are needed to prevent the 2011 sablefish harvest specifications from being exceeded, coastwide. Changes to trip limits also reduce complexity of the cumulative limit structure and provide year round fishing opportunity. These changes must be implemented in a timely manner by March 1, 2011 because failure to implement trip limit restrictions by March 1, 2011 would risk continued higher than anticipated catch of sablefish in the fishery south of 36° N. lat. These revisions are needed to keep the harvest of groundfish species within the harvest levels in place at the beginning of 2011, while allowing fishermen access to healthy stocks. Without these measures in place, the fisheries could risk exceeding the 2011 sablefish harvest specifications if catch continues to be higher than anticipated, as it was in the open access sablefish DTL fishery south of 36° N. lat. in 2010. Without these measures in place, the fisheries could risk exceeding the 2011 sablefish primary season cumulative limits that are based on the new, lower sablefish harvest levels, which could require restrictions later in the year for fisheries that take sablefish, or risk exceeding the 2011 sablefish harvest specifications. Delaying these changes would keep management measures in place that are not based on the best available data and that could lead to exceeding OYs. Such delay would impair achievement of one of the Pacific Coast Groundfish FMP goals to prevent overfishing and rebuild overfished stocks.

Changes to lingcod season start dates in the Washington recreational fishery opens the lingcod fishery one day earlier and will allow fishermen additional harvest opportunities for lingcod. This change is necessary to relieve a restriction by allowing lingcod harvest opportunities, while staying within OYs. These changes must be implemented in a timely manner, as quickly as possible, so that fishermen are allowed increased opportunities to harvest available healthy stocks and meet the objective of the Pacific Coast Groundfish FMP to allow fisheries to approach, but not exceed, OYs. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because that would prevent fishermen from taking these fish at the time they are available, preventing additional harvest in fisheries that are important to coastal communities.

Changes to the Washington recreational fishery, management measures are necessary to have consistency between state and Federal regulations.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: February 25, 2011.

Margo Schulze-Haugen,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.231 to subpart E, paragraph (b)(3)(i) is revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

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(b) * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (i.e., stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232, subpart E. For 2011 and beyond, the following annual limits are in effect: Tier 1 at 41,379 lb (18,769 kg), Tier 2 at 18,809 lb (8,532 kg), and Tier 3 at 10,748 lb (4,875 kg).

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■ 3. Table 2 (North) and Table 2 (South) to part 660, subpart E, are revised to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.210 - 660.232 before using this table 03012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line [6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
6	**Minor slope rockfish [2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
7	**Pacific ocean perch**	1,800 lb/ 2 months					
8	**Sablefish**	1,750 lb per week, not to exceed 7,000 lb/ 2 months	2,000 lb per week, not to exceed 7,000 lb/ 2 months		2,000 lb per week, not to exceed 8,000 lb/ 2 months		
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**	2,000 lb/ 2 months					
11	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Starry flounder**						
16	**Other flatfish[1/]**						
17	**Whiting**	10,000 lb/ trip					
18	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
19	**Canary rockfish**	CLOSED					
20	**Yelloweye rockfish**	CLOSED					
21	**Minor nearshore rockfish & Black rockfish**						
22	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
23	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
24	**Lingcod[4/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
25	**Pacific cod**	1,000 lb/ 2 months					
26	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
27	**Other fish[5/]**	Not limited					

TABLE 2 (North)

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.210 - 660.232 before using this table 03012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
4	**Splitnose**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,750 lb per week, not to exceed 7,000 lb/ 2 months	2,000 lb per week, not to exceed 7,000 lb/ 2 months		2,000 lb per week, not to exceed 8,000 lb/ 2 months		
7	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb	2,100 lb per week				
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[1/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							**TABLE 2 (South)**
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months		
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod[3/]**	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Other fish[4/] & Cabezon**	Not limited						

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
3/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

■ 4. Table 3 (North) and Table 3 (South) to part 660, subpart F, are revised to read as follows:

Table 3 (North) to Part 660, Subpart F -- Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.310 - 660.333 before using this table 3012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[6/]					
2	46°16' N. lat. - 45°03.83' N. lat.	30 fm line[6/] - 100 fm line[6/]					
3	45°03.83' N. lat. - 43°00' N. lat.	30 fm line[6/] - 125 fm line [6/ 7/]					
4	43°00' N. lat. - 42°00' N. lat.	20 fm line[6/] - 100 fm line[6/]					
5	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[6/]					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
6	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
7	**Pacific ocean perch**	100 lb/ month					
8	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 1,900 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 1,200 lb, not to exceed 2,250 lb/ 2 months		
9	**Thornyheads**	CLOSED					
10	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[2/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
22	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]	7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish [3/]				
23	**Lingcod[4/]**	CLOSED		400 lb/ month			CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Other Fish[5/]**	Not limited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
27	**SALMON TROLL** *(subject to RCAs when retaining any species of groundfish except for yellowtail rockfish and lingcod, as described below)*						
28	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
29	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
30	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read §§ 660.10 - 660.65 and §§ 660.310 - 660.333 before using this table 3012011

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
1	40°10' - 34°27' N. lat.	30 fm line[5/] - 150 fm line[5/]					
2	South of 34°27' N. lat.	60 fm line[5/] - 150 fm line[5/] (also applies around islands)					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[1/] & Darkblotched rockfish**						
4	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
5	South of 38° N. lat.	10,000 lb/ 2 months					
6	**Splitnose**	200 lb/ month					
7	**Sablefish**						
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 1,900 lb/ 2 months		300 lb/ day, or 1 landing per week of up to 1,200 lb, not to exceed 2,250 lb/ 2 months		
9	South of 36° N. lat.	400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 8,000 lb/ 2 months	300 lb/ day, or 1 landing per week of up to 1,200 lb, not to exceed 2,400 lb/ 2 months				
10	**Thornyheads**						
11	40°10' - 34°27' N. lat.	CLOSED					
12	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
13	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Arrowtooth flounder**						
15	**Petrale sole**						
16	**English sole**						
17	**Starry flounder**						
18	**Other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
21	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
22	South of 34°27' N. lat.	750 lb/ 2 months		750 lb/ 2 months			
23	**Canary rockfish**	CLOSED					
24	**Yelloweye rockfish**	CLOSED					
25	**Cowcod**	CLOSED					
26	**Bronzespotted rockfish**	CLOSED					
27	**Bocaccio**						
28	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
29	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			

TABLE 3 (South)

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
30	**Minor nearshore rockfish & Black rockfish**						
31	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
32	Deeper nearshore						
33	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		800 lb/ 2 months	
34	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
35	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	1,200 lb/ 2 months		
36	**Lingcod**[3/]	CLOSED		400 lb/ month			CLOSED
37	**Pacific cod**	1,000 lb/ 2 months					
38	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
39	**Other Fish**[4/] **& Cabezon**	Not limited					
40	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
42	40°10' - 38° N. lat.	100 fm - modified 200 fm [6/]	100 fm - 150 fm				100 fm - modified 200 fm [6/]
43	38° - 34°27' N. lat.	100 fm - 150 fm					
44	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
45		Groundfish: 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
46	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
47	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 5. In § 660.360 to subpart G, paragraph (c)(1) introductory text and (c)(1)(iii)(B) are revised to read as follows:

§ 660.360 Recreational fishery-management measures.

* * * * *

(c) * * *

(1) *Washington.* For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is 12 groundfish per day, including rockfish and lingcod, and is open year-round (except for lingcod). In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the Federal Register. South of Leadbetter Point, WA to the Washington/Oregon border, when Pacific halibut are

onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. The following sublimits and closed areas apply:

* * * * *

(iii) * * *

(B) Between 48°10′ N. lat. (Cape Alava) and 46°16′ N. lat. (Washington/Oregon border) (Washington Marine Areas 1–3), recreational fishing for lingcod is open for 2011, from March 12 through October 16.

* * * * *

[FR Doc. 2011–4728 Filed 3–1–11; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XA258

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the A season allowance of the 2011 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 28, 2011, through 1200 hrs, A.l.t., March 1, 2011. Comments must be received no later than 4:30 p.m., A.l.t., March 17, 2011.

ADDRESSES: Send comments to James W. Balsiger, Regional Administrator, Alaska Region, NMFS, *Attn:* Ellen Sebastian. You may submit comments, identified by RIN 0648–XA258, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. Comment will generally be posted without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on January 21, 2011 (76 FR 4082, January 24, 2011).

As of February 24, 2011, NMFS has determined that approximately 4,141 metric tons of pollock remain in the directed fishing allowance for pollock in Statistical Area 630 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2011 TAC of pollock in Statistical Area 630 of the GOA, NMFS is terminating the previous closure and is reopening directed fishing pollock in Statistical Area 630 of the GOA. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of pollock in Statistical Area 630 of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA effective 1200 hrs, A.l.t., March 1, 2011.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the pollock fishery in Statistical Area 630 of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 24, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow pollock fishery in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 17, 2011.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: February 25, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–4628 Filed 2–25–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XA257

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2011 total allowable catch (TAC) of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 25, 2011, through 1200 hrs, A.l.t., March 10, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2011 TAC of pollock in Statistical Area 620 of the GOA is 11,895 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010) and inseason adjustment (76 FR 469, January 5, 2011).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2011 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 11,595 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 24, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 25, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–4630 Filed 2–25–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 41
Wednesday, March 2, 2011

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

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

2 CFR Chapter XXIV

5 CFR Chapter LXV

12 CFR Chapter XVII

24 CFR Chapters I, II, III, IV, V, VI, VIII, IX, X, XII, and Subtitles A and B

48 CFR Chapter 24

[Docket No. FR–5506–N–01]

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: Office of the General Counsel, HUD.

ACTION: Request for information.

SUMMARY: In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," HUD is reviewing its existing regulations to evaluate their continued effectiveness in addressing circumstances for which the regulations were promulgated. As part of this review, HUD invites public comments to assist in the development of a plan for periodically analyzing existing significant regulations to determine whether they should be modified, streamlined, expanded, or repealed. HUD also seeks comment to identify specific current regulations that may be outdated, ineffective, or excessively burdensome. The purpose of this regulatory review is to make the Department's regulations more effective and less burdensome in achieving HUD's mission to create strong, sustainable, inclusive communities, and quality affordable homes for all.

DATES: *Comment Due Date:* May 2, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are three methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0001.

2. *E-mail Submission of Comments:* Comments may be submitted by e-mail to *RegulatoryReview@hud.gov.*

3. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the three methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's Regulatory Mission

HUD plays a significant role in the lives of families and in communities throughout America. HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. Consistent with that mission, HUD has statutory responsibility for a wide variety of regulations. HUD's regulatory programs and initiatives help create suitable living environments, and help to ensure that all citizens have access to decent, safe, and sanitary housing. HUD's regulations also assist in the enforcement of the nation's fair housing laws. HUD regulations also govern the provision of housing and other essential support to a wide range of individuals and families with special needs, including homeless individuals, the elderly, and persons with disabilities. Moreover, in light of recent economic events, HUD has undertaken a variety of rulemaking initiatives to strengthen the housing market to bolster the economy and protect consumers.

B. Executive Order 13563 on Improving Regulation and Regulatory Review

On January 18, 2011, President Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review." [1] The Executive Order requires federal agencies to seek more affordable, less intrusive ways to achieve policy goals and give careful consideration to the benefits and costs of those regulations. Agencies are directed to tailor their regulations to impose the

[1] The Executive Order was subsequently published in the *Federal Register* on January 21, 2011, at 76 FR 3821.

minimal amount of burden on society to obtain regulatory objectives. The Executive Order also emphasizes the importance of meaningful public participation in the rulemaking process, and encourages agencies to increase their use of online technologies to simplify and facilitate participation for all stakeholders. Executive Order 13563 also requires agencies to coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.

The Executive Order recognizes that these principles should not only guide the federal government's approach to new regulations, but to existing ones as well. To that end, agencies are required to review existing significant regulations to determine if they are outmoded, ineffective, insufficient or excessively burdensome. Executive Order 13563 also requires that each agency develop and submit to the Office of Management and Budget's Office of Information and Regulatory Affairs a preliminary plan for periodically reviewing existing significant regulations to determine whether they should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives.

II. This Notice—HUD's Implementation of Executive Order 13563

Through this notice, HUD announces several steps that it is undertaking to comply with the regulatory review requirements of Executive Order 13563. The steps announced in this notice will help HUD to ensure that its regulations are updated and remain necessary, are properly tailored, and effectively achieve regulatory objectives without imposing unwarranted costs.

First, pursuant to the Executive Order, HUD is developing a preliminary plan for periodically analyzing existing significant regulations. Consistent with the principles articulated in the Executive Order, and HUD's commitment to public participation in the rulemaking process, HUD is beginning this process by soliciting views from the public on defined methods for identifying rules that may be obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. HUD intends for its preliminary plan to include an initial list of candidate rules for review. Accordingly, HUD also seeks suggestions for specific current regulations that may be outmoded, ineffective, or excessively burdensome, and therefore should be included on the list.

HUD has also established an e-mail inbox at *RegulatoryReview@hud.gov* which interested parties may use, on an ongoing basis, to identify regulations that may be in need of review. The email box may also be used for the submission of comments in response to this notice. Irrespective of how they are submitted, HUD will make all comments received in response to this notice publicly available on *http://www.regulations.gov. Please see* the **ADDRESSES** section of this notice for additional information regarding the submission of comments.

III. Issues for Public Comment

The following is the list of topics on which HUD specifically seeks comments. The topics represent a preliminary attempt to identify issues raised by HUD's effort to develop a preliminary plan for the retrospective analysis of its regulations and to identify regulations on which it should focus. With regards to specific existing regulations, HUD is particularly interested in receiving comments on regulations that have been in effect for a sufficient amount of time to warrant a fair evaluation. Comments should reference a specific regulation by citation to the Code of Federal Regulations, and provide information on the perceived problem and the rationale for any recommended solution. Commenters should focus on rule changes that will achieve a broad public impact, rather than an individual personal or corporate benefit.

This is a non-exhaustive list that is meant to assist in the formulation of comments and is not intended to limit the issues that commenters may choose to address.

1. How can HUD best obtain and consider accurate, objective information and data about the cost, burdens, and benefits of existing regulations? Are there existing sources of data available that HUD can use to evaluate the effects of its regulations over time?

2. What factors should HUD use to select and prioritize rules and reporting requirements for review?

3. Are there any specific existing HUD regulatory requirements that are ill-advised or so burdensome as to merit elimination?

4. Are there any specific existing HUD regulatory requirements that, while necessary, are ineffective and in need of streamlining or other modification to achieve their objectives? Why are these requirements ineffective—are they unnecessarily complicated, burdensome, or outdated? What changes to the regulations would increase their usefulness and meet HUD's objectives?

5. Are there any HUD regulatory requirements that have been overtaken by technological developments? Can new technologies be used to modify, streamline, or do away with these requirements?

6. Are there any existing HUD requirements that duplicate or conflict with requirements of another Federal agency? Can the requirement be modified to eliminate the conflict?

7. Are there HUD regulations that are working well and that can be expanded or used as a model for other HUD programs?

Dated: February 22, 2011.

Helen R. Kanovsky,

General Counsel.

[FR Doc. 2011–4563 Filed 3–1–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0048]

RIN 1904–AC04

Energy Conservation Standards for Distribution Transformers: Public Meeting and Availability of the Preliminary Technical Support Document

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

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE or Department) will hold a public meeting to discuss and receive comments on the following issues: The equipment classes DOE plans to analyze for the purpose of considering the amendment of energy conservation standards for distribution transformers; the analytical framework, models, and tools DOE is using to evaluate standards for this type of equipment; the results of preliminary analyses performed by DOE for this equipment; and potential energy conservation standard levels derived from these analyses that DOE could consider for this equipment. DOE also encourages interested parties to submit written comments on these subjects. To inform stakeholders and facilitate the public meeting and comment process, DOE has prepared an agenda, a preliminary technical support document (TSD), and briefing materials, which are available at: *http://www.eere.energy.gov/buildings/appliance_standards/commercial/distribution_transformers.html.*

DATES: The Department will hold a public meeting on Tuesday, April 5, 2011, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit such request, along with an electronic copy of the statement to be given at the public meeting, before 4 p.m., Tuesday, March 29, 2011. Written comments are welcome, especially following the public meeting, and should be submitted by April 18, 2011.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Interested persons may submit comments, identified by the notice title, the Notice of Public Meeting (NOPM) for Energy Conservation Standards for Distribution Transformers, and provide the docket number EERE–2010–BT–STD–0048 and/or regulatory information number (RIN) 1904–AC04. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: DistributionTransformers-2010-STD-0048@ee.doe.gov.* Include EERE–2010–BT–STD–0048 and/or RIN 1904–AC04 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Public Meeting for Distribution Transformers, EERE–2010–BT–STD–0048 and/or RIN 1904–AC04, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this proposed rulemaking.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–8654. *E-mail: Jim.Raba@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. *Telephone:* (202) 287–6111. *E-mail: mailto:Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Statutory Authority

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, a program covering distribution transformers, the focus of this notice.[1] EPCA, as amended by the Energy Policy Act of 1992, Public Law 102–486, directs the U.S. Department of Energy (DOE or the Department) to prescribe energy conservation standards for those distribution transformers for which the Secretary of Energy (Secretary) determines that standards "would be technologically feasible and economically justified, and would result in significant energy savings." (42 U.S.C. 6317(a)) As discussed below in section II.A, DOE issued a final rule that prescribed standards for distribution transformers. 72 FR 58190 (October 12, 2007) (the 2007 final rule); *see* 10 CFR 431.196(b)–(c).

Following the 2007 final rule, several interested parties filed petitions alleging that DOE's environmental assessment, conducted for the rulemaking, failed to address employment impacts, the value of reduced carbon dioxide emissions, and impacts on the price of energy, as required by the National Environmental Policy Act of 1969. Under the terms of a settlement agreement dated July 10, 2009, DOE is required to review the standards for liquid-immersed and medium-voltage dry-type (MVDT) distribution transformers and publish, no later than October 1, 2011, in the **Federal Register** either a determination that standards for these products do not need to be amended, or a notice of proposed rulemaking including any new proposed standards for these products. If it is determined that an amendment to the standards is warranted, DOE is required to publish a final rule in the **Federal Register** no later than October 1, 2012.

Before DOE amends any standard for distribution transformers, however, it must first solicit comments on a proposed standard. Moreover, DOE will design each standard for this equipment to: (1) Achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified, and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3), 42 U.S.C. 6316(a), and 42 U.S.C. 6317(a) and (c)) To determine whether a proposed standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, weighing the following seven factors:

1. The economic impact of the standard on manufacturers and customers of equipment subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment which are likely to result from the imposition of the standard;
3. The total projected amount of energy savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the covered equipment likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary considers relevant.

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

(42 U.S.C. 6295(o)(2)(B)(i) and 6316(a))

Prior to proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that will be used to evaluate standards; the results of preliminary analyses; and potential energy conservation standard levels derived from these analyses. With this notice, DOE is announcing the availability of the preliminary technical support document (preliminary (TSD)), which details the preliminary analyses and summarizes the preliminary results. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

II. History of Standards Rulemaking for Distribution Transformers

The following sections provide a brief summary of DOE's rulemaking activities for distribution transformer energy conservation standards.

A. Background

DOE published a final rule in October 2007 that established energy conservation standards for liquid-immersed and MVDT distribution transformers. 72 FR 58190 (October 12, 2007); *see* 10 CFR 431.196(b)–(c). During the course of that rulemaking, the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, amended EPCA to set standards for low-voltage dry-type (LVDT) distribution transformers. (EPACT 2005, Section 135(c); codified at 42 U.S.C. 6295(y)) Consequently, DOE removed these transformers from the scope of that rulemaking. 72 FR at 58191 (October 12, 2007).

After publication of the 2007 final rule, certain parties filed petitions for review in the United States Courts of Appeals for the Second and Ninth Circuits, challenging the final rule, and several additional parties were permitted to intervene in support of these petitions. (All of these parties are referred to below collectively as "petitioners.") The petitioners alleged that, in developing energy conservation standards for distribution transformers, DOE did not comply with certain applicable provisions of EPCA and of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* DOE and the petitioners subsequently entered into a settlement agreement to resolve that litigation. The settlement agreement outlined an expedited timeline for the Department to determine whether to amend the energy conservation standards for liquid-immersed and MVDT distribution transformers. Under the terms of the settlement agreement, DOE must publish by October 1, 2011 either a determination that the standards for these distribution transformers do not need to be amended or a notice of public rulemaking (NOPR) that includes any new proposed standards and that meets all applicable requirements of EPCA and NEPA. If DOE finds that amended standards are warranted, DOE must publish a final rule containing such amended standards by October 1, 2012. This notice is the Department's first step in satisfying the requirements of the settlement agreement.

B. Current Rulemaking Process

DOE is initiating this rulemaking at the preliminary analysis stage rather than the framework document stage. In considering new or amended standards for a given product or type of equipment, DOE's historic practice, generally, is to publish a framework document as the first step in the rulemaking process, and to subsequently issue a preliminary TSD that contains the Department's preliminary analyses as to potential standards. The framework document generally advises interested parties of the analytical methods, data sources, and key assumptions DOE plans to use in considering the adoption of standards for the product or equipment type. Typically the document does not contain any analysis of the data.

On November 16, 2010, DOE announced a number of steps meant to streamline its regulatory process. Among these measures was the concept that, in appropriate circumstances, DOE might forego certain preliminary stages of the rulemaking process and gather data in more efficient ways. Because the previous rulemaking to develop standards for distribution transformers was completed in 2007, DOE has a set of methodologies, data sources and assumptions that have recently been vetted and revised according to public comments that the Department can use to perform the analyses needed for this rulemaking. Therefore, while DOE will conduct the analyses referenced by the petitioners' complaint and required by EPCA and NEPA according to standard practices for energy conservation standard rulemakings, DOE is not issuing a framework document for this rulemaking. Rather, DOE is initiating this rulemaking at the preliminary analysis stage and has prepared a preliminary TSD about which it is requesting comment.

At present, DOE plans to examine in this rulemaking amended standards for LVDT distribution transformers, as well as amended standards for liquid-immersed and MVDT transformers. DOE is not required to consider LVDT distribution transformers as part of the settlement agreement. As such, DOE may subsequently opt to conduct a separate rulemaking for LVDT transformers with a different timeline. However, the preliminary analysis considers LVDT distribution transformers along with liquid-immersed and MVDT distribution transformers.

III. Summary of the Analyses Performed by the U.S. Department of Energy

For each type of equipment under consideration in this rulemaking, DOE conducted in-depth technical analyses in the following areas: (1) Engineering, (2) markups to determine equipment price, (3) energy use, (4) life-cycle cost (LCC) and payback period (PBP) analyses, and (5) national impact analysis (NIA). The preliminary TSD presents the methodology and results of each of these analyses. It is available at the web address given in the **SUMMARY** section of this notice. The analyses are described in more detail below.

DOE also conducted several other analyses that either support the five aforementioned analyses or are preliminary analyses that will be expanded upon for the NOPR. These analyses include the market and technology assessment, the screening analysis (which contributes to the engineering analysis), and the shipments analysis (which contributes to the NIA). In addition to these analyses, DOE has completed preliminary work on the manufacturer impact analysis (MIA) and identified the methods to be used for the LCC subgroup analysis, the environmental assessment, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR. In conducting these analyses, DOE will specifically consider employment impacts, the value of reduced carbon dioxide emissions, impacts on the price of energy, and cumulative climate change impacts, which were the focus of the petitioners' complaint from the previous rulemaking.

A. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency of the equipment DOE is evaluating. This relationship serves as the basis for cost-benefit calculations for individual customers, manufacturers, and the nation. The engineering analysis identifies representative baseline

equipment, which is the starting point for analyzing technologies that provide energy efficiency improvements. Baseline equipment refers to a model or models having features and technologies typically found in equipment currently offered for sale. The baseline model in each equipment class represents the characteristics of the least efficient equipment in that class and, for equipment already subject to energy conservation standards, usually is a model that just meets the current standard. Chapter 5 of the preliminary TSD discusses the engineering analysis.

B. Markups To Determine Equipment Prices

DOE derives customer prices for equipment from data on manufacturer costs, manufacturer markups, retailer markups, distributor markups, and sales taxes. In deriving these markups, DOE has determined (1) The distribution channels for equipment sales; (2) the markup associated with each party in the distribution chain; and (3) the existence and magnitude of differences between markups for baseline equipment (baseline markups) and for more efficient equipment (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the equipment markups at each step in the distribution chain. The overall incremental markup relates the change in the manufacturer sales price of higher efficiency models (the incremental cost increase) to the change in the retailer or distributor sales price. Chapter 6 of the preliminary TSD discusses estimating markups.

C. Energy Use Analysis

The energy use analysis provides estimates of the annual energy consumption of distribution transformers. DOE uses these values in the LCC and PBP analyses and in the NIA. DOE developed energy consumption estimates for all equipment analyzed in the engineering analysis and for those non-analyzed equipment classes included in the NIA. Chapter 7 of the preliminary TSD discusses the energy use analysis.

D. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual customers. The LCC is the total customer expense for equipment over the life of the equipment. The LCC analysis compares the LCCs of equipment designed to meet possible energy conservation standards with the LCCs of the equipment likely to be installed in the absence of amended standards. DOE determines LCCs by considering (1) Total or incremental installed cost to the purchaser (which consists of manufacturer selling price, sales taxes, distribution chain markups, and installation cost); (2) the operating expenses of the equipment (energy use and maintenance); (3) expected equipment lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP is the number of years needed to recover the increase in purchase price (including installation cost) of more efficient equipment through savings in the operating cost of the equipment. It is the quotient of the change in total installed cost due to increased efficiency divided by the change in annual operating cost from increased efficiency. Chapter 8 of the preliminary TSD discusses the LCC and PBP analyses.

E. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total customer costs and savings expected to result from amended standards at specific efficiency levels. DOE calculated NES and NPV for each candidate standard level as the difference between a base case forecast (without amended standards) and the standards case forecast (with standards at that particular level). Cumulative energy savings are the sum of the annual NES determined over a specified analysis period. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, estimated equipment lifetimes, and estimates of changes in shipments in response to changes in equipment costs due to standards. Chapter 10 of the preliminary TSD discusses the NIA.

DOE consulted with interested parties as part of its process for conducting all of the analyses and invites further input from the public on these topics. The preliminary analytical results are subject to revision following review and input from the public. The final rule will contain the final analysis results.

The Department encourages those who wish to participate in the public meeting to obtain the preliminary TSD and to be prepared to discuss its contents. A copy of the preliminary TSD is available at the web address given in the **SUMMARY** section of this notice. However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD. The Department is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for this equipment or that DOE should address in the NOPR.

Furthermore, the Department invites all interested parties, regardless of whether they participate in the public meeting, to submit in writing by April 18, 2011, comments and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of standards for distribution transformers.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the expiration of the period for submitting written statements, the Department will consider all comments and additional information that it obtains from interested parties or through further analyses. Afterwards, the Department will publish either a determination that the standards for distribution transformers need not be amended or a NOPR proposing to amend those standards. Any NOPR will include proposed energy conservation standards for the equipment covered by this rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

Issued in Washington, DC, on February 23, 2011.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–4607 Filed 3–1–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2011–0104; Airspace Docket No. 11–AEA–2]

Proposed Amendment to and Establishment of Restricted Areas, Warren Grove; NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish two new restricted areas at the Warren Grove Range, NJ, in order to raise the maximum altitude of the range from the current 14,000 feet mean sea level (MSL), up to flight level (FL) 230; and to expand the lateral dimensions of the range airspace. In addition, the using agency for all Warren Grove restricted areas would be updated to reflect the current organization tasked with that responsibility. The New Jersey Air National Guard requested that the FAA take this action due to the increased need for aircrew training in high-altitude weapons delivery tactics.

DATES: Comments must be received on or before April 18, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2011–0104 and Airspace Docket No. 11–AEA–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. Comments on environmental and land use aspects to should be directed to: Mr. Harry Knudsen, Chief, Environmental Planning, National Guard Bureau, ANG/CEVP, 3500 Fetchet Avenue, Andrews AFB, MD 20762; *telephone:* (301) 836–8143.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

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–2011–0104 and Airspace Docket No. 11–AEA–2) 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–2011–0104 and Airspace Docket No. 11–AEA–2." 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 at the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

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

Background

Military use of the airspace near Warren Grove, Ocean County, NJ, can be traced back to World War II. Today, the Warren Grove Range consists of five restricted areas designated R–5002A, B, C, D and E. The range is used for a wide variety of military air and ground activities; including, but not limited to, air-to-surface weapons delivery training, laser systems, night vision goggle training, cargo air drops, parachute drops of personnel, and joint air and ground forces exercises. Current real-world combat requirements are driving a need for increased aircrew training in high altitude weapons delivery tactics. This training requires higher altitudes, along with increased lateral space in the high and medium altitude regimes. With its maximum altitude of 14,000 feet MSL, and lateral dimensions of roughly 11 nautical miles (NM) by 8 NM, the existing Warren Grove Range does not have enough space to contain this training.

Proposal

The FAA is proposing an amendment to 14 CFR part 73 to establish two new restricted areas (designated R–5002F and R–5002G) at the Warren Grove Range, NJ. This action would raise the restricted area ceiling from 14,000 feet MSL to FL 230 and would expand lateral limits of restricted airspace at the range. R–5002F would overlie the existing R–5002A, and R–5002E, and part of R–5002B, and would extend from 14,000 feet MSL up to, but not including, FL 200. A second proposed restricted area, R–5002G, would extend from FL 200 up to FL 230. R–5002G would overlie the proposed R–5002F; and, to provide the required expanded lateral space between FL 200 and FL 230, the boundaries of R–5002G would extend approximately 15 NM to the northeast, and 8 NM to the east, of the current range boundaries.

It should be noted that, since the floor of R–5002G is at FL 200, it would lie above the VOR Federal airway structure and therefore would have no impact on the airways in the vicinity. Also, there are no jet routes that would be affected by this proposal.

In addition to the proposed establishment of R–5002F and R–5002G, the following minor changes to the descriptions of the existing Warren Grove restricted areas would be made. The using agency for the five existing areas would be changed from the "108th Air Refueling Wing, McGuire AFB, NJ," to the "177th Fighter Wing, Atlantic City, NJ." This change is needed to reflect current organizational responsibilities. The new using agency would also apply to the proposed R–5002F and R–5002G. A minor wording change would be made to the designated altitude ceiling of restricted areas R–5002A, B and E. The current wording "to 14,000 feet MSL" would be changed to read "to but not including 14,000 feet MSL." This change is needed to avoid overlap with the 14,000 feet MSL floor of the new area R–5002F, which would

overlie R–5002A, B and E. The boundaries and times of use of R–5002A, B, C, D and E would not be changed by this proposal. The designated altitudes for R–5002C and D would remain as currently published.

Use of the proposed R–5002F and G would be coordinated on a real time basis. The two areas would only be activated with concurrent release by New York Air Route Traffic Control Center (ARTCC) and Washington ARTCC. To minimize potential impact to IFR traffic flows, the FAA will only authorize activation of the proposed areas when New York and Washington ARTCCs determine there would be minimal to no impact on IFR traffic operating in the affected area. In addition, the FAA would be able to recall the proposed airspace, if needed, on five minutes notice. A Letter of Agreement between New York ARTCC, Washington ARTCC and the using agency would define the roles, responsibilities and procedures for the activation of R–5002F and G. Pilots seeking information about the activity status of R–5002 should contact New York ARTCC on the frequency listed in the "Special Use Airspace" panel of the Washington Sectional Aeronautical Chart. New York ARTCC will continue to provide VFR traffic advisories, as prescribed in current FAA directives, to those aircraft requesting them.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would restructure the restricted airspace at the Warren Grove Range, NJ, to enhance safety and accommodate essential military training.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

§ 73.50 [Amended]

2. § 73.50 is amended as follows:

* * * * *

1. R–5002A Warren Grove, NJ [Amended]

By removing the current designated altitudes and using agency and substituting the following:

Designated altitudes. Surface to, but not including, 14,000 feet MSL.

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

2. R–5002B Warren Grove, NJ [Amended]

By removing the current designated altitudes and using agency and substituting the following:

Designated altitudes. 1,000 feet MSL to, but not including, 14,000 feet MSL.

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ

* * * * *

3. R–5002C Warren Grove, NJ [Amended]

By removing the current using agency and substituting the following:

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

4. R–5002D Warren Grove, NJ [Amended]

By removing the current using agency and substituting the following:

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

5. R–5002E Warren Grove, NJ [Amended]

By removing the current designated altitudes and using agency and substituting the following:

Designated altitudes. 3,500 feet MSL to, but not including, 14,000 feet MSL.

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

6. R–5002F Warren Grove, NJ [New]

Boundaries. Beginning at lat. 39°43′25″ N., long. 74°17′36″ W.; to lat. 39°40′10″ N., long. 74°20′14″ W.; to lat. 39°38′50″ N., long. 74°21′19″ W.; to lat. 39°38′25″ N., long. 74°22′05″ W.; to lat. 39°38′25″ N., long. 74°24′19″ W.; to lat. 39°38′30″ N., long. 74°29′29″ W.; to lat. 39°39′20″ N., long. 74°29′59″ W.; to lat. 39°44′50″ N., long. 74°24′39″ W.; to lat. 39°44′50″ N., long. 74°19′19″ W.; to the point of beginning.

Designated altitudes. 14,000 feet MSL to, but not including, FL 200.

Time of designation. Sunrise to sunset, other times as activated by NOTAM issued at least 48 hours in advance.

Controlling agency. FAA, New York ARTCC.

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

* * * * *

7. R–5002G Warren Grove, NJ [New]

Boundaries. Beginning at lat. 39°49′02″ N., long. 74°00′45″ W.; to lat. 39°38′18″ N., long. 74°12′34″ W.; to lat. 39°38′25″ N., long. 74°22′05″ W.; to lat. 39°38′25″ N., long. 74°24′19″ W.; to lat. 39°38′30″ N., long. 74°29′29″ W.; to lat. 39°39°20″ N., long. 74°29′59″ W.; to lat. 39°44′50″ N., long. 74°24′39″ W.; to lat. 39°49′02″ N., long. 74°16′18″ W.; to point of beginning.

Designated altitudes. FL 200 to FL 230.

Time of designation. Sunrise to sunset, other times as activated by NOTAM issued at least 48 hours in advance.

Controlling agency. FAA, New York ARTCC.

Using agency. New Jersey ANG, 177th Fighter Wing, Atlantic City, NJ.

Issued in Washington, DC, on February 22, 2011.

Edith V. Parish,

Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–4576 Filed 3–1–11; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408, 416, and 422

[Docket No. SSA–2010–0010]

RIN 0960–AH19

Recovery of Delinquent Debts—Treasury Offset Program Enhancements

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to amend our Tax Refund Offset (TRO) and Administrative Offset regulations. We are conforming our regulations to those of the Department of the Treasury (Treasury) for the following reasons: (1) Treasury removed the 10-year limitation to collect delinquent debts owed the United States by reducing eligible Federal payments, and (2) more States are participating in reciprocal agreements with Treasury to offset State payments, including tax refunds to reduce or extinguish a federally owed debt.

The potential exists to increase collection of Federal debts for two reasons: (1) We are authorized to collect debts indefinitely by offsetting eligible Federal payments through the Treasury Offset Program (TOP), and (2) States that have reciprocal agreements with Treasury are authorized to offset payments to reduce or extinguish debts owed to the Federal agencies.

DATES: To ensure that your comments are considered, we must receive them no later than May 2, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2010–0010 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2010–0010. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Jennifer C. Pendleton, Office of Payment and Recovery Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–5652. For information on amendments to 20 CFR part 408, please contact: Benjamin Franco, Office of International Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7342. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

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

Background

Due to increases in delinquent non-tax debt owed the United States, the Debt Collection Improvement Act (DCIA) of 1996 was enacted. Public Law 104–134, 110 Stat. 1321–358 *et seq.* (April 26, 1996).

The DCIA requires Federal agencies to refer delinquent non-tax debts to the Treasury's Financial Management Services (FMS) to collect non-tax payments. The DCIA authorizes Federal disbursing officials to withhold or reduce eligible Federal payments to a payee for a delinquent debt owed by that payee to the United States. This process is known as "administrative offset."

FMS uses the TOP process to collect these delinquent debts. TOP's delinquent debt matching and payment offset system results in an administrative offset. Currently, to collect debts owed to us, TOP uses the following types of administrative offset:

a. Tax Refund Offset (TRO). TOP reduces or withholds Federal income tax refunds to recover delinquent titles II, VIII, and XVI debts.

b. Other administrative offset. TOP reduces or withholds payments other than tax refunds, such as Federal travel and expense reimbursements, to collect unrecoverable titles II and XVI debts. (The use of other administrative offset is covered under regulations separate from TRO.)

TOP identifies debtors and matches them against recipients of Federal and State payments. These Federal and State payments are then used to reduce the delinquent debt.

Existing Department of the Treasury Regulations

The Treasury's Fiscal Service published an interim rule with request for comments on January 11, 2007. 72 FR 1283. In part, this interim rule describes the requirements that apply to offset of certain Federal non-tax payments to collect delinquent debts owed to the States based on reciprocal agreements between Treasury and participating States. Social Security, Special Veterans Benefits, and Supplemental Security Income benefits are excluded from offset to satisfy a State debt. 31 CFR 285.6(g)(1)(ii). The interim rule also provides for offset of State payments to collect certain delinquent Federal non-tax debts.

Additionally, FMS launched a pilot program in Maryland and New Jersey. This pilot program evaluated if the benefits of the offset program outweighed its costs. FMS gathered information gained from this pilot program, as well as comments received on the interim rule, before issuing a final rule. On November 3, 2009, Treasury's Fiscal Service published a final rule stating that it would proceed with the reciprocal offset program with the States. 74 FR 56719. It intends to expand this reciprocal program between Treasury and the States. This expansion started with New York on January 20, 2010.

On June 11, 2009, Treasury's Fiscal Service simultaneously published an NPRM and an interim final rule to remove the 10-year limitation to collect outstanding non-tax debts by offset. 74 FR 27730, 27707. This change allows for collection of these debts without regard to any time limitation. To avoid undue hardship, Treasury added a requirement that debtors with debts outstanding more than 10 years on or before June 11, 2009 be notified of the intent to offset and of all applicable due process rights. This notification gives the debtor an opportunity to dispute the debt, enter into a repayment agreement, or possibly avoid offset.

On December 23, 2009, Treasury's Fiscal Service published a final rule adopting the interim rule. No comments were received on the interim rule. 74 FR 68149. On December 28, 2009, it also published a final rule based on the NPRM cited above. Two comments were received on the NPRM but no changes were made to that proposed rule, and it was also adopted. 74 FR 68537.

Treasury's Fiscal Service published an amendment to correct the date for offsetting tax refund payments to collect past-due non-tax debt as of December 28, 2009. Non-tax debt, including delinquent debts of 10 years or longer prior to December 28, 2009 will be collected by tax refund offset.

Changes to Our Regulations

We propose to change our regulations to conform to the Treasury regulations. In addition to collecting non-tax debts beyond the original 10-year statute of limitations, we will now collect delinquent titles II, VIII, and XVI overpayments by offset of various State payments, including State tax refunds. DCIA of 1996, 31 U.S.C. 3716; 31 CFR 285.6.

Therefore, we propose changes to §§ 404.520, 404.521, 408.940, 408.941, 416.580, 416.581, and 422.310. Under these sections, we notify the overpaid person and refer overpayments to Treasury for tax refund and administrative offset.

Clarity of These Rules

Executive Order 12866 as supplemented by Executive Order 13563 requires us to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make rules easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g. grouping and order of sections, use of headings, paragraphing?

When will we start to use this rule?

We will not use this rule until we evaluate public comments and publish a final rule in the **Federal Register**. Any final rule we issue includes an effective date. We will continue to use our current rule until that date. If we publish a final rule, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and does not require Office of Management and Budget approval under the Paperwork Reduction Act.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Income taxes, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 408

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

20 CFR Part 416

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

20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social Security.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III, parts 404, 408, 416, and 422 as set forth below:

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

Subpart F—[Amended]

1. The authority citation for subpart F of part 404 is revised to read as follows:

Authority: Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b–17); 31 U.S.C. 3716; 31 U.S.C. 3720A.

2. Amend § 404.520(b) by removing the word "individuals" and adding in its place the word "persons" in the second sentence, and by revising the third sentence to read as follows:

§ 404.520 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

* * * * *

(b) * * * We refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the amount of time the debts have been outstanding.

3. Amend § 404.521 by revising the section heading, introductory text, and paragraphs (a) and (b) to read as follows:

§ 404.521 Notice to overpaid persons.

Before we request that an overpayment be collected by reduction of Federal and State income tax refunds, we will send a written notice of our action to the overpaid person. In our notice of intent to collect an overpayment through tax refund offset, we will state:

(a) The amount of the overpayment; and

(b) That we will collect the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

(1) Repays the overpayment in full;

(2) Sends evidence to us at the address given in our notice that

(i) The overpayment is not past due; or

(ii) The overpayment is not legally enforceable; or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

* * * * *

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart I—[Amended]

4. The authority citation for subpart I of part 408 is revised to read as follows:

Authority: Secs. 702(a)(5), 808, and 1147 of the Social Security Act (42 U.S.C. 902(a)(5), 1008, and 1320b–17); 31 U.S.C. 3716, 3720A.

5. Amend § 408.940(b) by revising the third sentence to read as follows:

§ 408.940 When will we refer an SVB overpayment to the Department of the Treasury for tax refund offset?

* * * * *

(b) * * * We refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the amount of time the debts have been outstanding.

6. Amend § 408.941 by revising the introductory text, and paragraphs (a) and (b) to read as follows:

§ 408.941 Will we notify you before we refer an SVB overpayment for tax refund offset?

Before we request that an overpayment be collected by reduction of Federal and State income tax refunds, we will send a written notice of our action to the overpaid person. In our notice of intent to collect an overpayment through tax refund offset, we will state:

(a) The amount of the overpayment; and

(b) That we will collect the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

(1) Repays the overpayment in full;

(2) Sends evidence to us at the address given in our notice that

(i) The overpayment is not past due; or

(ii) The overpayment is not legally enforceable, or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

* * * * *

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

Subpart E—[Amended]

7. The authority citation for subpart E of part 416 is continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3716; 31 U.S.C. 3720A.

8. Amend § 416.580(b) by removing the word "individuals" in the second sentence and adding in its place "persons" and by revising the last sentence to read as follows:

§ 416.580 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

* * * * *

(b) * * * We refer overpayments to the Department of the Treasury for offset against Federal tax refunds regardless of the amount of time the debts have been outstanding.

9. Amend § 416.581 by revising the section heading, the introductory text, and paragraphs (a) and (b), and in paragraph (e) by removing the word "individual" in two places and adding in its place "person".

§ 416.581 Notice to overpaid person.

We will make a request for collection by reduction of Federal and State income tax refunds only after we determine that a person owes an overpayment that is past due and provide the overpaid person with written notice. Our notice of intent to collect an overpayment through tax refund offset will state:

(a) The amount of the overpayment; and

(b) That we will seek collection of the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid person as refunds of Federal and State income taxes by an amount equal to the amount of the overpayment unless, within 60 calendar days from the date of our notice, the overpaid person:

(1) Repays the overpayment in full;

(2) Sends evidence to us at the address given in our notice that

(i) The overpayment is not past due; or

(ii) The overpayment is not legally enforceable; or

(3) Asks us to waive collection of the overpayment under section 204(b) of the Act.

* * * * *

PART 422—ORGANIZATION AND PROCEDURES

Subpart D—[Amended]

10. The authority citation for subpart D of part 422 continues to read as follows:

Authority: Secs. 204(f), 205(a), 702(a)(5), and 1631(b) of the Social Security Act (42 U.S.C. 404(f), 405(a), 902(a)(5), and 1383(b)); 5 U.S.C. 5514; 31 U.S.C. 3711(e); 31 U.S.C. 3716.

11. Amend § 422.310 by revising paragraphs (a)(1) and (b) to read as follows:

§ 422.310 Collection of overdue debts by administrative offset.

(a) *Referral to the Department of the Treasury for offset.* (1) We recover overdue debts by offsetting Federal and State payments due the debtor through the Treasury Offset Program (TOP). TOP is a Government-wide delinquent debt matching and payment offset process operated by the Department of the Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal and State payments owed the debtor. Federal payments owed the debtor include current "disposable pay," defined in 5 CFR 550.1103, owed by the Federal Government to a debtor who is an employee of the Federal Government. Deducting from such disposable pay to collect an overdue debt owed by the employee is called "Federal salary offset" in this subpart.

* * * * *

(b) *Debts we refer.* We refer for administrative offset all qualifying debts that meet or exceed the threshold amounts used by the Department of the Treasury for collection from State and Federal payments, including Federal salaries.

* * * * *

[FR Doc. 2011–4586 Filed 3–1–11; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA–R10–UST–2011–0097; FRL–9274–8]

Oregon: Tentative Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Oregon has applied for final approval of its Underground Storage Tank (UST)

Program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Oregon's application and made the tentative decision that the State's UST program satisfies all requirements necessary to qualify for final approval. Today's **Federal Register** notice solicits comments on the proposed rule.

DATES: Comments and/or request for a public hearing on this determination must be received on or before April 1, 2011. A public hearing will be held on April 13, 2011 from 9 a.m.–12 p.m. at the United States Environmental Protection Agency, 805 SW. Broadway, Suite 500, Portland, Oregon 97205, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest in a hearing is not communicated to EPA in writing by April 1, 2011. EPA will determine by April 11, 2011, whether there is sufficient interest to warrant a public hearing. The State of Oregon will be invited to participate in any public hearing held by EPA on this subject. *Please see* **SUPPLEMENTARY INFORMATION,** Item C, for details.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–UST–2011–0097, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: griffith.katherine@epa.gov.*
- *Mail:* Katherine Griffith, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, *Mail Stop:* OCE–082, Seattle, WA 98101.

Instructions: Direct your comments to Docket ID No. EPA–R10–UST–2011–0097. 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 identify 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 or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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.

Please see **SUPPLEMENTARY INFORMATION,** Item D, for details on the location of the documents in hard copy form.

FOR FURTHER INFORMATION CONTACT: Katherine Griffith, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, *Mail Stop:* OCE–082, Seattle, WA 98101, *phone number:* (206) 553–2901, *e-mail: griffith.katherine@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve implementation of State UST programs in lieu of the Federal UST program. Approval is granted when it has been determined that the State program: (1) Is no less stringent than the overall Federal program and includes the notification requirements of Section 9004(a)(8), 42 U.S.C. 6991c(a)(8), and (2) provides for adequate enforcement of compliance with UST standards of Section 9004(a), 42 U.S.C. 6991c(a).

B. State of Oregon

The Oregon Department of Environmental Quality (ODEQ) is the lead implementing agency for the UST program in Oregon. ODEQ has broad statutory authority to regulate UST releases under Oregon Revised Statutes, Chapter 183, Administrative Procedures Act, Section 310–750; Chapter 465, Hazardous Waste and Hazardous Materials I (Removal or Remedial Action); Chapter 466, Hazardous Waste and Hazardous Materials II (Oil Storage Tanks); and Chapter 468, Environmental Quality Generally (Enforcement and Audit Privilege). Specific authority to regulate the installation, operation, maintenance, and closure of USTs is found under ODEQ Administrative Rules Chapter 340, Divisions 11, 12, 122, 150, 151, 160, 162, and 163.

Oregon is not authorized to carry out its UST program in Indian Country. This includes all lands within the exterior boundaries of the Grande Ronde, Klamath, Siletz, Umatilla and Warm Springs Reservations; any land held in trust by the United States for an Indian tribe, and any other lands that are Indian Country within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing, (2) a brief statement of the requester's interest in the Regional Administrator's determination and of information that he/she intends to submit at such hearing, (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity, and (4) the associated Docket ID Number.

It is EPA's policy to make reasonable accommodation to persons with disabilities wishing to participate in the Agency's programs and activities, pursuant to the Rehabilitation Act of 1973, 29 U.S.C. 791, *et seq.* Any request for accommodation should be made to Katherine Griffith, (206) 553–2901, preferably a minimum of two weeks in advance of the public hearing date, so that EPA will have sufficient time to process the request.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held. Please bring this notice to the attention of any persons known by you to have an interest in this determination.

D. Location of Documents

All documents that are in the electronic docket are also available in hard copy during normal business hours at the following locations:

1. U.S. Environmental Protection Agency, Library, Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101 from 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

2. Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, OR 97204 from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

3. Oregon Department of Environmental Quality, 2146 NE. 4th, Suite 104, Bend, OR 97701 from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

4. Oregon Department of Environmental Quality, 700 SE. Emigrant, Suite 330, Pendleton, OR 97801 from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; and

5. Oregon Department of Environmental Quality, 221 Stewart Ave, Suite 201, Medford, OR 97501 from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

E. Statutory and Executive Order (EO) Review

This proposed rule only applies to Oregon's UST Program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

1. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from its review under Executive Order 12866.

2. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. 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; 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. 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 are listed in 40 CFR part 9.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size 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. I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because the proposed rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

4. Unfunded Mandates Reform Act

This proposed rule does not have any impacts as described in the Unfunded Mandates Reform Act because this rule codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law. It does not contain any unfunded mandates or significantly or uniquely affects small governments.

5. Executive Order 13132: Federalism

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule proposes to authorize pre-existing State rules. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it proposes to approve a state program.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus

standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This proposed rule does not affect the level of protection provided to human health or the environment because this rule proposes to authorize pre-existing State rules which are no less stringent than existing Federal requirements.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This notice is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c.

Dated: February 23, 2011.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2011–4640 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 53, 63, 64

[CC Docket Nos. 95–20, 98–10, WC Docket No. 10–132; FCC 11–15]

Review of Wireline Competition Bureau Data Practices, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission proposes the removal of the narrowband comparably efficient interconnection (CEI) and open network architecture (ONA) reporting requirements that currently apply to the Bell Operating Companies (BOCs) due to a lack of continuing relevance and utility. The Notice of Proposed Rulemaking continues the Commission's examination of its data practices through the Data Innovation Initiative, including identification of data collections that can be eliminated without reducing the effectiveness of the Commission's decision-making process.

DATES: Comments are due on or before April 1, 2011 and reply comments are due on or before April 18, 2011. Written comments on the Paperwork Reduction Act proposed or modified information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 2, 2011.

ADDRESSES: You may submit comments, identified by WC Docket No.10–132, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or *phone:* (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller at (202) 418–1507, Wireline Competition Bureau, Industry Analysis and Technology Division. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith Boley Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket Nos. 95–20, 98–10 and WC Docket No. 10–132, adopted and released on February 8, 2011. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable Sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

Initial Paperwork Reduction Act of 1995 Analysis

This document proposes to eliminate the remaining narrowband BOC-specific CEI and ONA reporting requirements, and seeks comment on this proposal. Subsequent reporting requirements related to the NPRM are not likely, and

if any reporting requirements are later adopted pursuant to this NPRM, it is too speculative at this time to request comment from the OMB or interested parties under Section 3507(d) of the Paperwork Reduction Act, 44 U.S.C. 3507(d). Therefore, if the Commission determines that reporting is required, it will seek comment from the OMB and interested parties prior to any such requirements taking effect. Nevertheless, interested parties are encouraged to comment on whether the elimination of the BOC-specific CEI and ONA reporting requirements is necessary. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we will seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees." Nevertheless, interested parties are encouraged to comment on whether elimination of the BOC-specific CEI and ONA reporting requirements is necessary.

Synopsis of the Further Notice of Proposed Rulemaking

I. Introduction

1. In the Notice of Proposed Rulemaking, we continue the Commission's examination of its data practices through the Data Innovation Initiative, including the identification of data collections that can be eliminated without reducing the effectiveness of our decision-making. In this proceeding, we propose the removal of the narrowband comparably efficient interconnection (CEI) and open network architecture (ONA) reporting requirements that currently apply to the Bell Operating Companies (BOCs) due to a lack of continuing relevance and utility, and we seek comment on that proposal.

II. Background

2. The Commission initiated its Computer Inquiry proceedings more than 40 years ago, and imposed CEI and ONA obligations in the Computer III proceedings over 20 years ago. The Commission has described the origins and development of those dockets elsewhere in detail. The Commission adopted comparably efficient interconnection (CEI), open network architecture (ONA), and other nonstructural requirements as alternatives to the Computer II structural separation requirements for the BOCs.

3. A BOC that complies with the CEI obligations may offer enhanced services on an integrated basis so long as (i) the BOC's enhanced services operations take under tariff the basic services it uses in offering enhanced services and (ii) the basic services are made available to other enhanced service providers and users under the same tariffs on an unbundled and functionally equal basis. In addition, the BOC may not discriminate in favor of its own enhanced services operations in providing CEI and must file reports to substantiate that nondiscrimination. BOCs also must post service-specific CEI plans on the Internet (i.e., one CEI plan per service or group of services) that describe and demonstrate how a BOC is providing unaffiliated enhanced service providers with equal access to its basic services by its compliance with nine CEI parameters.

4. Unlike CEI plans, ONA plans apply to enhanced services generally and impose more specific and comprehensive unbundling requirements on the BOCs, not unlike Section 251's facilities unbundling obligations. Through ONA, BOCs must separate key components of their basic services into "basic service elements," and make those components, or building blocks, available to unaffiliated enhanced service providers to build new services regardless of whether the BOC's affiliated enhanced services operations use these unbundled components. In refining its rules for filing ONA plans, the Commission subsequently categorized the BOCs' "basic service elements" into four groups, which the BOCs are required to make available to information services providers. In a subsequent order, the Commission also determined that certain operations support systems (OSS) capabilities—namely service order entry and status; trouble reporting and status; diagnostics, monitoring, testing, and network reconfiguration; and traffic data collection—are ONA services under the Commission's ONA rules. Finally, the ONA rules contain certain procedural requirements governing the amendment of ONA plans. These procedures allow information service providers to request and receive new ONA services and impose various annual, semi-annual, and quarterly reporting requirements.

5. As part of its 1998 Biennial Review, the Commission sought comment on the interplay between the safeguards and terminology established in the Telecommunications Act of 1996 and the Computer III regime, including the continued application of the Computer III safeguards to BOC provision of enhanced services. In 2001, the Common Carrier Bureau invited parties to update and refresh the record in these proceedings, 66 FR 1506, March 15, 2001.

6. In 2005, the Commission relieved the BOCs from CEI and ONA obligations with respect to wireline broadband Internet access services offered by facilities-based providers in the Wireline Broadband Internet Access Services Order, 70 FR 60222, October 17, 2005. In 2006, Verizon obtained additional relief from Computer Inquiry requirements when its petition for forbearance regarding enterprise broadband services was deemed granted by operation of law without a vote by the Commission, pursuant to Section 10 of the Act. In 2007, the Commission forbore from applying the Computer III and other BOC-specific Computer Inquiry rules to any of AT&T's broadband information services to provide AT&T parity with Verizon. The Commission concluded, among other things, that application of the Computer III CEI and ONA requirements unnecessarily constrains how AT&T may offer its broadband transmission services to its enterprise customers, and that removal would promote competitive market conditions by increasing the competitive pressure on all enterprise service providers. The Commission subsequently extended the same relief to Qwest.

7. In 2010, as part of the agency's reform agenda to improve its fact-based, data-driven decision making, the Wireline Competition Bureau (Bureau) initiated an examination of its data practices to improve the way the Commission collects, uses and disseminates data. The Bureau solicited and received recommendations with regard to four issues: (1) The utility and rationale for each of its existing data collections; (2) additional data that commenters believe the Bureau needs to inform Commission policymaking activities; (3) how it may improve collection and analysis processes for existing collections; and (4) how it may improve dissemination of reports and analyses it produces.

III. Discussion

8. We propose to eliminate the remaining narrowband BOC-specific CEI and ONA reporting requirements, and seek comment on this proposal. In its comments, Verizon asserts that these obligations can increase the BOCs' costs of providing information services, and that there is no reason for any of these requirements to continue. AT&T asks the Bureau to determine whether the benefits of the data collected outweigh the burdens associated with its collection, and seeks the elimination of these requirements. No commenter or

reply commenter in this docket argues for the retention of any of the BOC-specific CEI and ONA reporting requirements.

9. The record supports this proposal. No commenter to the WCB Data Innovation Initiative Public Notice has identified any utility to any service provider for the reports and filings that BOCs must generate to comply with CEI and ONA, and since the Commission does not rely on any of these submissions in the course of its decision making, we propose elimination of these remaining Computer III requirements. Further, in both the 2006 and 2008 Biennial Review proceedings, where the BOCs sought elimination of the CEI and ONA reporting requirements pursuant to Section 11 of the Act, no commenter voiced any opposition to their elimination or advocated in support of their continued application.

IV. Procedural Matters

A. Ex Parte Presentations

10. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

B. Comment Filing Procedures

11. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All pleadings are to reference CC Docket Nos. 95–20, 98–10 and WC Docket No. 10–132. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

12. Parties should send a copy of each filing to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *CPDcopies@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

13. Filings and comments will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

V. Ordering Clauses

14. Accordingly, *it is ordered* that, pursuant to Sections 1, 2, 4, 10, 11, 201–205, 251, 271, 272, 274–276, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 160, 161, 201–205, 251, 271, 272, 274–276, and 303(r) the Notice of Proposed Rulemaking *is adopted.*

15. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

16. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). SBA defines small telecommunications entities as those with 1,500 or fewer employees. This proceeding pertains to the BOCs which, because they would not be deemed a "small business concern" under the Small Business Act and have more than 1,500 employees, do not qualify as small entities under the RFA. Therefore, we certify that the proposals in this Notice of Proposed Rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities.

17. The Commission will send a copy of the Notice of Proposed Rulemaking, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–4642 Filed 3–1–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

RIN 0750–AH15

Defense Federal Acquisition Regulation Supplement; Increase the Use of Fixed-Price Incentive (Firm Target) Contracts (DFARS Case 2011–D010)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to increase the use of fixed-price incentive (firm target) contracts, with particular attention to share lines and ceiling prices.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 2, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2011–D010, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2011–D010" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2011–D010." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2011–D010" on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2011–D010 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, *Attn:* Ms. Amy Williams, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350. Please cite DFARS Case 2011–D010.

SUPPLEMENTARY INFORMATION:

I. Background

This DFARS case was initiated to incentivize productivity and innovation in industry, as set forth in a memorandum from the Under Secretary of Defense for Acquisition, Technology, and Logistics, dated November 3, 2010. The memorandum provided guidance to the secretaries of the military departments and directors of defense agencies on obtaining greater efficiency and productivity in defense spending. In support of this initiative, DoD is proposing to amend DFARS subpart 216.4 to require that contracting officers must—

(1) Give particular consideration to the use of fixed-price incentive (firm target) contracts, especially for acquisitions moving from development to production; and

(2) Pay particular attention to share lines and ceiling prices for fixed-price incentive (firm target) contracts, with a 120 percent ceiling and a 50/50 share ratio as the default arrangement.

II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule does not impose economic burdens on contractors. The purpose and effect of this rule is to establish an approval threshold for contract type and to encourage the use of a particular contract type in order to incentivize productivity and innovation in industry. However, DoD has prepared an initial regulatory flexibility analysis that is summarized as follows:

This rule proposes to amend the Defense Federal Acquisition Regulation Supplement to implement the initiative on incentivizing productivity and innovation in industry, as presented by the Under Secretary of Defense for Acquisition, Technology, & Logistics in a memorandum dated November 3, 2010. The objective of the rule is to incentivize contractors. The legal basis is 41 U.S.C. 1303 and 48 CFR chapter 1.

The proposed rule will not have much impact on small entities because the focus of the rule is for development efforts that are moving into early production. Small entities are more likely to receive awards for commercial products, including commercially available off-the-shelf products, for which firm-fixed-price contracts are appropriate. In Fiscal Year 2010, 93 percent of awards to small businesses were firm-fixed-price contracts, and 99.99 percent of awards to small businesses were other than fixed-price incentive contracts.

The proposed rule imposes no reporting, recordkeeping, or other information collection requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to the rule that would adequately implement the DoD policy. There is no significant economic impact on small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D010) in correspondence.

IV. Paperwork Reduction Act

The proposed rule contains no information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 216

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 216 is proposed to be amended as follows:

PART 216—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 216 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Add section 216.403–1 to read as follows:

216.403–1 Fixed-price incentive (firm target) contracts.

(b) *Application.*

(1) The contracting officer shall give particular consideration to the use of fixed-price incentive (firm target)

contracts, especially for acquisitions moving from development to production.

(2) The contracting officer shall pay particular attention to share lines and ceiling prices for fixed-price incentive (firm target) contracts, with a 120 percent ceiling and a 50/50 share ratio as the default arrangement.

[FR Doc. 2011–4527 Filed 3–1–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

RIN 0750–AG89

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting (DFARS Case 2009–D026)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update and clarify the requirements for multiyear contracting. No statutory changes are incorporated in this proposed rule.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 2, 2011, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2009–D026, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2009–D026 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Manual Quinones, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Manual Quinones, Telephone (703) 602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

This DFARS case was initiated by DoD based on an internal DoD policy decision to perform a comprehensive review of DFARS subpart 217.1, Multiyear Contracting to update and clarify the requirements relating to multiyear contracting. This effort includes reorganizing existing coverage for multiyear acquisitions, such as the co-location of basic congressional notification requirements under 217.170, General. Additionally, the contents of 217.173, Multiyear contracts for weapons systems and 217.174, Multiyear contracts that employ economic order quantity procurement, are merged into 217.170, General, and 217.172, Multiyear contracts for supplies. The requirements governing multiyear contracts for military family housing, currently at 217.171(b), are separated out and highlighted as a new section 217.173, entitled "Multiyear contracting for military family housing." Citations to the United States Code, relevant DoD regulations, and the Federal Acquisition Regulation have been updated. No changes to existing DoD policy, including implementation of any statutorily mandated acquisition-related thresholds, are being made in this rule.

II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD does not expect this rule to have an economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not change the existing requirements of subpart 217.1. Further, these requirements are primarily internal procedures for DoD. Therefore, DoD has not performed an initial regulatory flexibility analysis.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D026) in correspondence.

IV. Paperwork Reduction Act

This rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 217

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 217 is proposed to be amended as follows:

PART 217—SPECIAL CONTRACTING METHODS

1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Section 217.170 is amended by—

a. Redesignating paragraphs (a), (b), (c), (d), and (e) as paragraphs (b), (c), (d), (e), and (f), respectively;

b. Adding a new paragraph (a);

c. Amending redesignated paragraph (b) by removing "Public Law 105–56" and adding in its place "Pub. L. 105–56," and removing "Section" and adding in its place "section";

d. Amending redesignated paragraph (c) by removing "217.172(f)(2)" and adding in its place "217.172(g)(2)";

e. Revising redesignated paragraph (d); and

f. Revising redesignated paragraph (f).

The additions and revisions read as follows:

217.170 General.

(a) This section explains the general rules that are common to all multiyear contracts.

* * * * *

(d) The head of the agency must provide written notice to the congressional defense committees at least 10 days before termination of any multiyear contract (10 U.S.C. 2306b(1)(6), 10 U.S.C. 2306c(d)(3), section 8008(a) of Pub. L. 105–56, and similar sections in subsequent DoD appropriations acts).

* * * * *

(f)(1) DoD must provide notification to the congressional defense committees at least 30 days before entering into a multiyear contract for certain procurements, including those expected to—

(i) Employ an unfunded contingent liability in excess of $20 million (*see* 10 U.S.C. 2306b(1)(1)(B)(i)(II), 10 U.S.C. 2306(d)(1), and section 8008(a) of Pub.

L. 105–56 and similar sections in subsequent DoD appropriations acts);

(ii) Employ economic-order-quantity procurement in excess of $20 million in any one year of the contract (see 10 U.S.C. 2306b(1)(1)(B)(i)(I));

(iii) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any one year (see 10 U.S.C. 2306b(1)(1)(B)(ii) and section 8008(a) of Pub. L. 105–56 and similar sections in subsequent DoD appropriations acts); or

(iv) Include a cancellation ceiling in excess of $100 million (see 10 U.S.C. 2306c(d)(4), 10 U.S.C. 2306b(g), and section 8008(a) of Pub. L. 105–56 and similar sections in subsequent DoD appropriations acts).

(2) A DoD component must submit a request for authority to enter into a multiyear contract described in paragraphs (f)(1)(i) through (iv) of this section as part of the component's budget submission for the fiscal year in which the multiyear contract will be initiated. DoD will include the request, for each candidate it supports, as part of the President's Budget for that year and in the Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (section 8008(b) of Pub. L. 105–56).

(3) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements in paragraph (f)(2) of this section, the request for authority to enter into a multiyear contract must be—

(i) Formally submitted by the President as a budget amendment; or

(ii) Made by the Secretary of Defense, in writing, to the congressional defense committees (section 8008(b) of Pub. L. 105–56).

(4) Agencies must establish reporting procedures to meet the congressional notification requirements of paragraph (f)(1) of this section. The head of the agency must submit a copy of each notice to the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD (AT&L) DPAP) and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

(5) If the budget for a contract that contains a cancellation ceiling in excess of $100 million does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(i) The notification required by paragraph (f)(1) of this section shall include—

(A) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(B) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) A financial risk assessment of not including budgeting for costs of contract cancellation (10 U.S.C. 2306b(g) and 10 U.S.C. 2306c(d)); and

(ii) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award.

3. Section 217.171 is revised to read as follows:

217.171 Multiyear contracts for services.

(a) The head of the agency may enter into a multiyear contract for a period of not more than five years for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated (10 U.S.C. 2306c). Covered services are—

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training requiring high-quality instructor skills (*e.g.,* training for pilots and aircrew members or foreign language training);

(4) Base services (*e.g.,* ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal); and

(5) Environmental remediation services for—

(i) An active military installation;

(ii) A military installation being closed or realigned under a base closure law as defined in 10 U.S.C. 2667(h)(2); or

(iii) A site formerly used by DoD.

(b) The head of the agency must be guided by the following principles when entering into a multiyear contract for services:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of the plant or equipment. As used in this section, "useful commercial life" means the commercial utility of the facilities rather than the physical life, with due consideration given to such factors as the location, specialized nature, and obsolescence of the facilities.

(2) Consider the desirability of obtaining an option to extend the term of the contract for a reasonable period not to exceed three years at prices that do not include charges for plant, equipment, or other nonrecurring costs already amortized.

(3) Consider the desirability of reserving the right to take title, under the appropriate circumstances, to the plant or equipment upon payment of the unamortized portion of the cost.

(c) Before entering into a multiyear contract for services, the head of the agency must make a written determination that—

(1) There will be a continuing requirement for the services consistent with current plans for the proposed contract period;

(2) Furnishing the services will require—

(i) A substantial initial investment in plant or equipment; or

(ii) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) Using a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations.

4. Section 217.172 is revised to read as follows:

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law (10 U.S.C. 2306b).

(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105–1(b), the use of such a contract will promote the national security of the United States (10 U.S.C. 2306b(a)(6)).

(c) Multiyear contracts in amounts exceeding $500 million must be specifically authorized by law (10 U.S.C. 2306b and 10 U.S.C. 2306c). A multiyear supply contract may be authorized by an appropriations act or a law other than an appropriations act (10 U.S.C. 2306b(i)(3) and (1)(3)).

(d) The head of the agency shall not enter into a multiyear contract unless—

(1) The Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract; and

(2) In the case of a contract for procurement of aircraft, the budget request includes full funding of procurement funds for production beyond advance procurement activities of aircraft units to be produced in the fiscal year covered by the budget.

(e)(1) The head of the agency must not enter into or extend a multiyear contract

that exceeds $500 million (when entered into or extended until the Secretary of Defense identifies the contract and any extension in a report submitted to the congressional defense committees (10 U.S.C. 2306b(1)(5)).

(2) In addition, for contracts equal to or greater than $500 million, the head of the contracting activity must determine that the conditions required by paragraphs (g)(2)(i) through (vii) of this section will be met by such contract, in accordance with the Secretary's certification and determination required by paragraph (g)(2) of this section (10 U.S.C. 2306b(a)(1)(7)).

(f) The head of the agency may enter into a multiyear contract for—

(1) A weapon system and associated items, services, and logistics support for a weapon system; and

(2) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see 217.172(g)(4) and (5) regarding economic order quantity procurements). Before initiating an advance procurement, the contracting officer must verify that it is consistent with DoD policy (*e.g.,* the full funding policy in Volume 2A, chapter 1, of DoD 7000.14–R, Financial Management Regulation).

(g) The head of the agency shall ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (b) of this section:

(1) The multiyear exhibits required by DoD 7000.14–R, Financial Management Regulation, are included in the agency's budget estimate submission and the President's budget request.

(2) The Secretary of Defense certifies to Congress in writing, by no later than March 1 of the year in which the Secretary requests legislative authority to enter into such contracts, that each of the conditions in paragraphs (g)(2)(i) through (vii) of this section is satisfied (10 U.S.C. 2306b(i)(1)(A) through (G)).

(i) The Secretary has determined that each of the requirements in FAR 17.105, paragraphs (b)(1) through (b)(5) will be met by such contract and has provided the basis for such determination to the congressional defense committees (10 U.S.C. 2306b(i)(1)(A)).

(ii) The Secretary's determination under paragraph (g)(2)(i) of this section was made after the completion of a cost analysis performed by the Defense Cost and Resource Center of the Department of Defense and such analysis supports the findings (10 U.S.C. 2306b(i)(1)(B)).

(iii) The system being acquired pursuant to such contract has not been determined to have experienced cost growth in excess of the critical cost growth threshold pursuant to 10 USC 2433(d) within five years prior to the date the Secretary anticipates such contract (or a contract for advance procurement entered into consistent with the authorization for such contract) will be awarded (10 U.S.C. 2306b(i)(1)(C)).

(iv) A sufficient number of end items of the system being acquired under such contract have been delivered at or within the most current estimates of the program acquisition unit cost or procurement unit cost for such system to determine that current estimates of such unit costs are realistic (10 U.S.C. 2306b(i)(1)(D)).

(v) Sufficient funds will be available in the fiscal year in which the contract is to be awarded to perform the contract, and the future-years defense program for such fiscal year will include the funding required to execute the program without cancellation (10 U.S.C. 2306b(i)(1)(E)).

(vi) The contract is a fixed price type contract (10 U.S.C. 2306b(i)(1)(F)).

(vii) The proposed multiyear contract provides for production at not less than minimum economic rates, given the existing tooling and facilities. The head of the agency shall submit to USD(C)(P/B) information supporting the agency's determination that this requirement has been met (10 U.S.C. 2306b(i)(1)(G)).

(viii) The head of the agency shall submit information supporting this certification to USD(C)(P/B) for transmission to Congress through the Secretary of Defense.

(A) The head of the agency shall, as part of this certification, give written notification to the congressional defense committees of—

(1) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(2) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(3) A financial risk assessment of not including the budgeting for costs of contract cancellation (10 U.S.C. 2306b(g)); and

(B) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award.

(3) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(4)(A)).

(4) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law (10 U.S.C. 2306b(i)(4)(B)).

(5) The Secretary may make the certification under paragraph (g)(2) of this section notwithstanding the fact that one or more of the conditions of such certification are not met if the Secretary determines that, due to exceptional circumstances, proceeding with a multiyear contract under this section is in the best interest of the Department of Defense and the Secretary provides the basis for such determination with the certification (10 U.S.C. 2306b(i)(5)).

(6) The Secretary of Defense may not delegate this authority to make the certification under paragraph (g)(2) of this section or the determination under paragraph (g)(5) of this section to an official below the level of the Under Secretary of Defense for Acquisition, Technology, and Logistics (10 U.S.C. 2306b(i)(6)).

(7) The Secretary of Defense shall send a notification containing the findings of the agency head under FAR 17.105(b), and the basis for such findings, 30 days prior to the award of a multiyear contract or a defense acquisition program that has been specifically authorized by law (10 U.S.C. 2306b(i)(7)).

(8) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (10 U.S.C. 2306b(i)(2)). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD(AT&L)DPAP for transmission to Congress via the Secretary of Defense and the President.

(h) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

5. Section 217.173 is revised to read as follows:

217.173 Multiyear contracts for military family housing.

The head of the agency may enter into multiyear contracts for periods up to four years for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year (10 U.S.C. 2829).

217.174 [Removed]

6. Section 217.174 is removed.

[FR Doc. 2011–4525 Filed 3–1–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 231

Defense Federal Acquisition Regulation Supplement; Independent Research and Development Technical Descriptions (DFARS Case 2010–D011)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to require contractors to report independent research and development (IR&D) projects generating annual costs in excess of $50,000.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before May 2, 2011, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2010–D011, using any of the following methods:

Regulations.gov: http://www.regulations.gov.

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2010–D011" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2010–D011." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2010–D011" on your attached document. Follow the instructions for submitting comments.

E-mail: dfars@osd.mil. Include DFARS Case 2010–D011 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703–602–0302.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule revises requirements for reporting IR&D projects that generate annual costs in excess of $50,000 to the Defense Technical Information Center (DTIC). Beginning in the 1990s, DoD reduced its technical exchanges with industry, in part to ensure independence of IR&D. The result has been a loss of linkage between funding and technological purpose. The reporting requirements, as mandated by 10 U.S.C. 2372, will provide in-process information from DoD-sponsored IR&D projects to increase effectiveness by providing visibility into the technical content of industry IR&D activities to meet DoD needs and promote the technical prowess of the industry. Without the collection of this information, DoD will be unable to maximize the value of the IR&D funds the Department disburses without infringing on the independence of contractors to choose which technologies to pursue in IR&D programs.

II. Executive Order 12866, Regulatory Planning and Review

This rule has been determined to be a significant regulatory action and therefore is subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because reporting the IR&D projects utilizing the DTIC on-line input form does not require contractors to expend significant effort or cost. Furthermore, the threshold for reporting annual IR&D costs in excess of $50,000, as set forth in the rule, ensures that the IR&D project reporting requirements will not apply to a significant number of small entities.

At this time, DoD is unable to estimate the number of small entities to which this rule will apply. Therefore, DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2010–D011) in correspondence.

IV. Paperwork Reduction Act

The proposed rule contains new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). DoD invites public comments on the following aspects of the proposed rule: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The following is a summary of the information collection requirement.

Title: Defense Federal Acquisition Regulation Supplement (DFARS) Part 231, Contract Cost Principles and Procedures.

Type of Request: New collection.

Number of Respondents: 700.

Responses per Respondent: 38.5.

Annual Responses: 26,950.

Average Burden per Response: 0.5 hours.

Annual Burden Hours: 13,475.

Needs and Uses: This information collection requires contractors to report IR&D projects generating annual costs in excess of $50,000. The information will provide in-process information from DoD-sponsored IR&D projects to increase the effectiveness by providing visibility into the technical content of industry IR&D activities to meet DoD needs. Without the collection of this information, DoD will be unable to maximize the value of the IR&D funds that it disburses without infringing on the independence of a contractor to choose which technologies to pursue in its independent research and development program.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail *Jasmeet_K._Seehra@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, *Attn:* Mr. Mark Goemrsall, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, *Attn:* Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060, or e-mail *dfars@osd.mil.* Include DFARS Case 2010–D011 in the subject line of the message.

List of Subjects in 48 CFR Part 231

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 231 is proposed to be amended as follows:

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 231 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Amend section 231.205–18 by adding paragraph (c)(iii)(C) and revising the introductory text of paragraph (c)(iv) to read as follows:

231.205–18 Independent research and development and bid and proposal costs.

* * * * *

(c) * * *

(iii) * * *

(C) For a contractor's annual IR&D costs in excess of $50,000 to be allowable, the IR&D projects generating the costs must be reported to the Defense Technical Information Center (DTIC) using the DTIC's on-line input form and instructions. The inputs must be updated at least annually and when the project is completed. Copies of the input and updates must be made available for review by the cognizant administrative contracting officer (ACO) and the cognizant Defense Contract Audit Agency auditor to support the allowability of the costs.

(iv) For major contractors, the cognizant ACO or corporate ACO shall—

* * * * *

[FR Doc. 2011–4528 Filed 3–1–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2011–0027]

RIN 2127–AK52

Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking issued pursuant to the Cameron Gulbransen Kids Transportation Safety Act of 2007. The Act directed NHTSA to initiate a rulemaking to consider requirements for automatic reversal systems (ARS) for power windows and to make a final decision. The agency has decided not to issue a final rule adopting any such new requirements and instead to terminate rulemaking.

DATES: Effective March 2, 2011, the proposed rule published September 1, 2009, at 74 FR 45143 is withdrawn.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Michael Pyne, NHTSA Office of Avoidance Standards, telephone 202–366–1810. For legal issues, you may call J. Edward Glancy, NHTSA Office of Chief Counsel, telephone 202–366–2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: For the reasons set forth below, we have decided not to issue a final rule adopting any new requirements for automatic reversal systems (ARS) and are withdrawing our 2009 proposal regarding ARS. This document explains our decision.

The Cameron Gulbransen Kids Transportation Safety Act of 2007 (K. T. Safety Act) directed the Secretary of Transportation to initiate a rulemaking to consider requiring all power windows and panels on light motor vehicles to stop closing and reverse direction automatically when they detect an obstruction, to prevent children and others from being trapped, injured, or killed. It also provided the Secretary with discretion whether to issue a final rule. It stated that if the Secretary determines that additional safety requirements are reasonable, practicable and appropriate, the Secretary shall issue those requirements. Alternatively, it stated if the Secretary determines that no additional safety requirements meet those criteria, the Secretary shall report to Congress on the reasons for not issuing such requirements.

In response to the K. T. Safety Act, the Department's National Highway Traffic Safety Administration (NHTSA) published in the **Federal Register** (74 FR 45143; September 1, 2009) a notice of proposed rulemaking (NPRM) proposing new requirements for ARS. The proposal discussed the agency's analysis of the injuries and fatalities related to power windows and the performance requirements that the agency had recently adopted for safer power window switches. The benefits of the safer switches rules will be increasingly realized as vehicles with "safer switches" replace older vehicles lacking them.

After the agency analyzed and considered the benefits and costs of installing ARS for all types of vehicle windows in developing the NPRM, NHTSA decided to propose requiring ARS on only one type of power

window, i.e., "express-up" or "one-touch closing" power windows. These windows close without continuous actuation of the window switch by a person. NHTSA also sought comments on requiring ARS for other power windows, and explained that the agency could include such a requirement in a final rule at the end of this rulemaking proceeding. The agency provided estimates of the costs and benefits of the proposal and a number of other regulatory alternatives. NHTSA also announced that it would begin providing consumers with information regarding which vehicles are equipped with ARS at *http://www.safercar.gov* by October 2009.

In response to its proposal, NHTSA received comments from vehicle manufacturer associations, suppliers, safety advocacy organizations, members of Congress and individuals. Vehicle manufacturers supported the proposal. In contrast, several safety advocacy organizations, several suppliers, and a number of individuals urged that the agency require ARS for all power windows. The members of Congress said that they believed that the agency's proposal would not sufficiently achieve the Congressional intent of protecting children and asked the agency to review and take fully into account additional data submitted by commenters about the frequency of injuries and deaths involving power windows.

Before reaching a final decision, we carefully considered all of the public comments. Among other things, we considered data from a survey conducted for and submitted by a safety organization relating to the incidence of minor injuries. We also considered cost estimates provided by a supplier. In the NPRM, we noted that because the agency's estimates of less severe injuries were primarily based on emergency room data, those estimates likely represented a floor rather than a ceiling. The survey data indicate that there are a substantial number of minor injuries, although the survey does not allow us to estimate the number of minor injuries on an annual basis.

We attempted to calculate the number of each type of injury based on information from multiple sources, including mortality data, hospital emergency department records, the agency's Special Crash Investigations program, and survey information submitted during the comment period. For the purpose of making these calculations, we grouped power window injuries into two main categories.

First, there are a very small number of critical and fatal power window injuries resulting from an occupant's (usually a young child) being strangled or having his or her chest compressed when trapped by a closing power window. Most of these critical and fatal injuries have occurred in older vehicles with unsafe switches. They happened as a result of an occupant's kneeling or leaning on a window switch in a vehicle with unprotected window switches, causing inadvertent window closings. This category of injuries has been addressed by our rules requiring safer switches. New vehicles with safety switches are steadily replacing the older vehicles without such switches, thus also steadily eliminating this category of injuries.

Second, there is a much larger number of less serious, mostly minor, injuries, most often resulting from a power window's closing on a person's finger or hand. In these cases, the window is intentionally activated (presumably by the driver). The most common injuries involve the pinching of fingers.

Given our present understanding of the data about the nature, source, and number of power window injuries, we believe that there are very few fatalities or serious injuries that any additional requirements for ARS could mitigate or prevent. They would instead address primarily "finger-pinch" type injuries.

There is considerable uncertainty about benefits estimates, particularly with respect to preventing or mitigating the less serious, mostly minor, injuries involving a power window closing on a person's finger or hand. The agency has no data to indicate just how effective ARS is in reducing finger-pinch type injuries, because the number of finger-pinch type injuries is not collected in any data source. While the available information suggests that there may be a relatively large number of these injuries, we do not know how many occur annually; the survey results do not include or enable us to make a reliable estimate. The only information we have about the severity of those injuries is that in a survey respondent population of 1,001 people, 3 out of 33 people injured sometime in their lifetime indicated that they had sought medical attention for a power window related injury, indicating that this was a very minor injury for most. The company that conducted the survey did not ask those respondents about the nature of their injury, the type or model year of vehicle and the type of power window involved, or the seating position they were occupying at the time of their injury. Thus, we do not have clear information about the severity or source of these injuries.

Further, there is substantial uncertainty as to the proper way of valuing them for purposes of analyzing benefits and costs. For the NPRM, we did not have a method for valuing the cost of minor, non-crash injuries and so instead assumed values based on the comprehensive costs for persons who are injured in crashes ($16,799 for person whose maximum injury level was a minor injury). However, this approach had the effect of overstating the value because the costs associated with a person who experiences a minor "finger-pinch" type injury are not comparable to the costs associated with a person who is injured in a crash. In the latter situation, the person's entire body is typically exposed to crash forces, and the average person experiencing minor injuries in a crash has more than one such injury. The agency still does not have a generally accepted method for valuing the much lower cost of these more minor, non-crash injuries.

We also considered the possibility of people being entrapped without being injured. While entrapment without an injury is theoretically possible, e.g., in situations of partial window enclosure, we are not aware of any evidence that this is an actual problem.

In reaching a final decision regarding this rulemaking, we considered the statutory provision providing that the Department is to issue a final rule in this area only if it determines that additional safety standards are reasonable, practicable, and appropriate.

After considering the comments and available data, we have determined for the reasons stated above that there is not sufficient information to make a determination at this time that a requirement for ARS for power windows that do not already have this feature would, or would not, be reasonable, practicable and appropriate. Such a rule would be costly, but we cannot determine with any certainty whether the costs would be reasonable given the potential benefits. Those benefits would almost wholly consist of an uncertain number of minor injuries.

We also considered an alternative approach of requiring automakers to continue their currently voluntary practice of providing ARS for "express-up" or "one-touch closing" power windows and to specifying an ARS test requirement. The alternative we proposed included an ARS test requirement based on a United Nations Economic Commission for Europe (ECE) regulation (R21). We believe that this alternative, if implemented, would result in minimal benefits and nearly no costs because vehicle manufacturers are

already voluntarily equipping their "express-up" or "one-touch closing" power windows with ARS that are either ECE compliant or nearly ECE compliant.

We have also considered further whether safety would be materially improved by adopting the proposed alternative that requires ARS for express-up windows. Thus far, manufacturers have been voluntarily providing ARS for all express up windows. There is no reason at present to believe that vehicle manufacturers will discontinue this current practice. Moreover, the benefits of specifying the ECE R21 test requirement would be minimal. Given these considerations, adopting the proposed rule would not, at present, advance the child safety goal of the K. T. Safety Act. We do not read the statutory language to require issuance of such a rule, and we have accordingly decided not to issue a rule in this proceeding.

We plan to monitor power window designs on new vehicles and data relevant to power window injuries. If a new entrant in the U.S. market began importing vehicles with express up windows lacking ARS or if a manufacturer discontinued its current voluntary practice of providing ARS, we would reexamine our options.

The K. T. Safety Act specifies that if the Department does not issue a rule requiring ARS for power windows, it must make available to the public through the Internet and other means information indicating which vehicles with power windows and/or panels are or are not equipped with ARS. The Department has been or will be using several methods to provide this information since October 2009. We have been using our Five-Star safety rating program at *http://www.safercar.gov* to indicate whether particular make-models have ARS. To improve this program and help ensure that vehicles that are listed have effective ARS, we plan to list vehicles as having ARS only if they have ECE compliant ARS (as determined in a test procedure that in the near future we will place in Docket number NHTSA—2006–26555—accessible at *http://www.regulations.gov*) or the slightly more stringent ARS test requirement that we developed for power windows systems that operate when the key is not in the ignition.

We are also including general information about power window safety in our "Buying a Safer Car for Child Passengers" brochure and at our new Web site "Keeping Kids Safe: Inside and Out".[1]

Based on the foregoing discussion, we are withdrawing our 2009 notice of proposed rulemaking published at 74 FR 45143 on September 1, 2009, and terminating rulemaking.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: February 25, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–4734 Filed 2–28–11; 11:15 am]

BILLING CODE 4910–59–P

[1] *http://www.nhtsa.gov/Driving+Safety/Child+Safety/Keeping+Kids+Safe:+Inside+&+Out.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2010–0162]

RIN 2127–AK43

Public Workshop and Hearing for Rear Visibility; Federal Motor Vehicle Safety Standard, Rearview Mirrors, Federal Motor Vehicle Safety Standard, Low-Speed Vehicles; Phase-in Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking: Announcement of a public technical workshop, a public hearing and re-opening of public comment period.

SUMMARY: On December 7, 2010, NHTSA published a notice of proposed rulemaking proposing to amend the agency's Federal motor vehicle safety standard on rearview mirrors to improve the ability of a driver of a vehicle to detect pedestrians in the area immediately behind the vehicle and thereby minimize the likelihood of the vehicle striking a pedestrian while the vehicle is moving backward. NHTSA is announcing two separate public events relating to this proposal. The first event, a public technical workshop, will be held on March 11, 2011, to discuss technical issues relevant to the test procedure described in the proposed rule. The second event, a public hearing, will be held on March 23, 2011 to provide an opportunity for the public to present oral testimony regarding the proposal. The dates, times, locations, and framework for these public events are announced in this notice. In order to facilitate the submission of written comments in connection with these two events, the comment period for the proposed rule will be reopened for a period of 45 days. In a separate document appearing in today's edition of the **Federal Register**, the agency is correcting various minor errors regarding metric conversions, section cross references and other matters.

DATES: *Workshop:* NHTSA will hold the public technical workshop on March 11, 2011, beginning at 9 a.m. and continuing until 12 p.m., local time, at the location indicated in the **ADDRESSES** section below.

Public hearing: The public hearing will be held on March 23, 2011, beginning at 9 a.m. and continuing until 3 p.m. at the location indicated in the **ADDRESSES** section below. If you would like to present oral testimony at either of these public events, please contact the person identified under **FOR FURTHER INFORMATION CONTACT**, at least 5 days before the meeting.

Comments: The comment period for the proposed rule published December 7, 2010, at 75 FR 76186 is reopened. Comments will be accepted until April 18, 2011.

ADDRESSES: The March 11 public technical workshop will be held at the National Highway Traffic Safety Administration Vehicle and Research Test Center, 10820 State Route 347—Bldg. 60, East Liberty, Ohio 43319.

The March 23 public hearing will be held in the media center at the Department of Transportation West Building, 1200 New Jersey Ave., SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: If you would like to present oral testimony at either of these public events, please contact Mr. Markus Price at DOT by the date specified under **DATES**, at: Office of Crash Avoidance, Visibility and Injury Prevention Division, NHTSA, 1200 New Jersey Ave., SE., Washington, DC 20590; *telephone number:* (202) 366–0098; *fax number:* (202) 493–2990; *e-mail address: markus.price@dot.gov* (preferred method of registration).

Please provide the following information: The event at which you would like to speak; the time you wish to speak (morning or afternoon) at the hearing; your name and affiliation and the number of the individuals from your affiliation who are planning to attend; your address, e-mail address, telephone and fax numbers; and any accommodations you may need, such as a sign language interpreter.

SUPPLEMENTARY INFORMATION: The proposed rule would expand the

required field of view for all passenger cars, trucks, multipurpose passenger vehicles, buses, and low-speed vehicles rated at 10,000 pounds or less, gross vehicle weight, as specified in the Cameron Gulbransen Kids Transportation Safety Act of 2007 (75 FR 76186). NHTSA's proposal would specify an area immediately behind each vehicle and require that the driver must be able to see that area when the vehicle's transmission is in reverse, thereby minimizing the likelihood of a vehicle striking a pedestrian while performing a backing maneuver. The agency is announcing two separate public events to obtain additional public input related to this proposal. In a separate document appearing elsewhere in today's edition of the **Federal Register**, the agency is correcting various minor errors regarding metric conversions, section cross references and other matters.

The purpose of the first public event, a public technical workshop, is to provide interested parties an opportunity to discuss technical issues relevant to the test procedure. We are holding the workshop after our preliminary evaluation of comments suggests that various test procedure comments could be better presented using a "hands-on" approach. The workshop will be held in a lab environment. The agency will provide a vehicle and various test equipment to aid parties in demonstrating compliance testing concerns relevant to the proposed rule.

The purpose of the second meeting, a public hearing, is to provide the public with an opportunity to present oral comments regarding NHTSA's proposal. The agency wants to give the public this additional opportunity to express their views on effective ways of meeting the mandate in the Cameron Gulbransen Kids Transportation Safety Act.

Technical Workshop Procedures

To ensure that all interested persons have the benefit of the discussions at the workshop, we will arrange for a written transcript of the workshop. It will be placed in the public docket for this rulemaking. You may make arrangements for copies of the transcript directly with the court reporter.

Because the technical workshop will be located in a lab environment, NHTSA requests that the number of those attending from each affiliation be held to a minimum. For security purposes, photo identification is required to enter NHTSA's vehicle research test center.

Public Hearing Procedures

Once NHTSA establishes how many people have registered to speak at the public hearing, it will allocate an appropriate amount of time to each participant, allowing time for necessary breaks. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony. For planning purposes, each speaker should anticipate speaking for approximately ten minutes, although we may need to shorten that time if there is a large turnout. We will accommodate your requested presentation time to the extent we can, consistent with the other requests we receive. We request that you bring three copies of your statement or other material so that it can be placed into the docket.

To accommodate as many speakers as possible, we prefer that speakers not use technological aids (*e.g.,* audio-visuals, computer slideshows). However, if you plan to do so, you must notify the contact person in the **FOR FURTHER INFORMATION CONTACT** section above in advance of the meeting and make advance arrangements with that person regarding the use of any aids in order to facilitate set-up.

NHTSA will conduct the public hearing informally; thus, technical rules of evidence will not apply. Panel members may ask clarifying questions during the oral presentations, but will not respond to presentations at that time. We will arrange for a written transcript of the meeting. You may make arrangements for copies of the transcripts directly with the court reporter.

This meeting will be held in the media room at the Department of Transportation West Building. Therefore, each participant must register with building security personnel and be escorted to the meeting room by the contact person in the **FOR FURTHER INFORMATION CONTACT** section, or someone delegated by him for this purpose. Please arrive at the security desk sufficiently in advance of the expected time of your presentation to allow for the time necessary to obtain security clearance. The length of time will depend on the size of the audience seeking to attend the meeting.

Public Comments

Persons wishing to submit written comments related to the proposal or either public event may do so on or before the new comment closing date announced in this document. The agency will consider all comments received before the close of business on the new comment closing date announced in the **DATES** section of this preamble. The comments will be available for examination in the docket at the above address both before and after that date.

To minimize the interval between the issuance of the final rule and the original statutory deadline, the agency does not expect to be able to consider any late comments. Rulemaking action may proceed at any time after the comment due date. Any comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking.

The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date. It is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the public docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on: February 24, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–4736 Filed 2–28–11; 11:15 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA–2010–0162]

RIN 2127–AK43

Rear Visibility; Federal Motor Vehicle Safety Standard, Rearview Mirrors; Federal Motor Vehicle Safety Standard, Low-Speed Vehicles; Phase-in Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; corrections.

SUMMARY: In December 2010, we published a notice of proposed rulemaking proposing to amend the agency's Federal motor vehicle safety standard on rearview mirrors to improve the ability of a driver of a vehicle to detect pedestrians in the area immediately behind the vehicle and thereby minimize the likelihood of the

vehicle's striking a pedestrian while the vehicle is moving backward. This document corrects various minor errors regarding metric conversions, section cross references and other matters. In a separate document appearing in today's edition of the **Federal Register**, the agency reopens the comment period for the proposal and announces plans for holding two public meetings regarding the proposal.

DATES: The corrections made in this document are effective upon publication.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Markus Price, Office of Crash Avoidance Standards (*Phone:* 202–366–0098; *Fax:* 202–366–7002). For legal issues, you may call Mr. Steve Wood, Assistant Chief Counsel for Vehicle Rulemaking and Harmonization, (*Phone:* 202–366–2992; FAX: 202–366–3820). You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On December 7, 2010, NHTSA published in the **Federal Register** (75 FR 76186) a notice of proposed rulemaking (NPRM) to expand the required field of view for all passenger cars, trucks, multipurpose passenger vehicles, buses, and low-speed vehicles rated at 10,000 pounds or less, gross vehicle weight. Specifically, NHTSA proposed to specify an area immediately behind each vehicle that the driver must be able to see when the vehicle's transmission is in reverse. It appears that, in the near term, the only technology available with the ability to comply with this proposal would be a rear visibility system that includes a rear-mounted video camera and an in-vehicle visual display. Adoption of this proposal would significantly reduce fatalities and injuries caused by backover crashes involving children, persons with disabilities, the elderly, and other pedestrians. This proposal was issued in response to the Cameron Gulbransen Kids Transportation Safety Act of 2007, which directs NHTSA to issue a final rule amending the agency's Federal motor vehicle safety standard on rearview mirrors to improve the ability of a driver to detect pedestrians in the area immediately behind his or her vehicle and thereby minimize the likelihood of a vehicle striking a pedestrian while its driver is backing the vehicle.

We provided a 60-day comment period that ended February 7, 2011. In a separate document appearing elsewhere in today's edition of the **Federal Register**, the agency reopens the comment period for the proposal and announces plans for holding two public meetings regarding the proposal.

Correction of Errors

In FR Doc. 2010–30353, beginning on page 76186 in the **Federal Register** of Tuesday, December 7, 2010, the following corrections are made:

1. On page 76187, in the first column, Section VII of the Table of Contents references a subsection "Potential Alternatives". There is no such subsection; all discussion of alternatives appears in the subsection "Comparison of Regulatory Alternatives". Correct version of VII of the Table of Contents is:

VII. Proposal to Mandate Improved Rear Visibility
- A. Proposed Specifications
- i. Improved Rear Field of View
- ii. Visual Display Requirements
- a. Rearview Image Size
- b. Image Response Time
- c. Image Linger Time
- d. Visual Display Luminance
- e. Other Aspects of Visual Display
- iii. Requirements for External System Components
- B. Proposed Compliance Tests
- i. Ambient Lighting Conditions
- ii. Rear Visibility Test Object
- iii. Rear Visibility Compliance Test Procedures
- a. Rear Field of View Test Procedure
- b. Rearview Image Size Test Procedure
- C. Proposed Effective Date and Phase-In Schedule
- D. Summary of Estimated Effectiveness, Costs and Benefits of Available Technologies
- E. Comparison of Regulatory Alternatives
- i. System Effectiveness
- ii. Costs
- iii. Benefits
- iv. Net Benefits
- v. Cost Effectiveness

2. On page 76234, figure 6 is corrected to read as follows:

BILLING CODE 4910–59–P

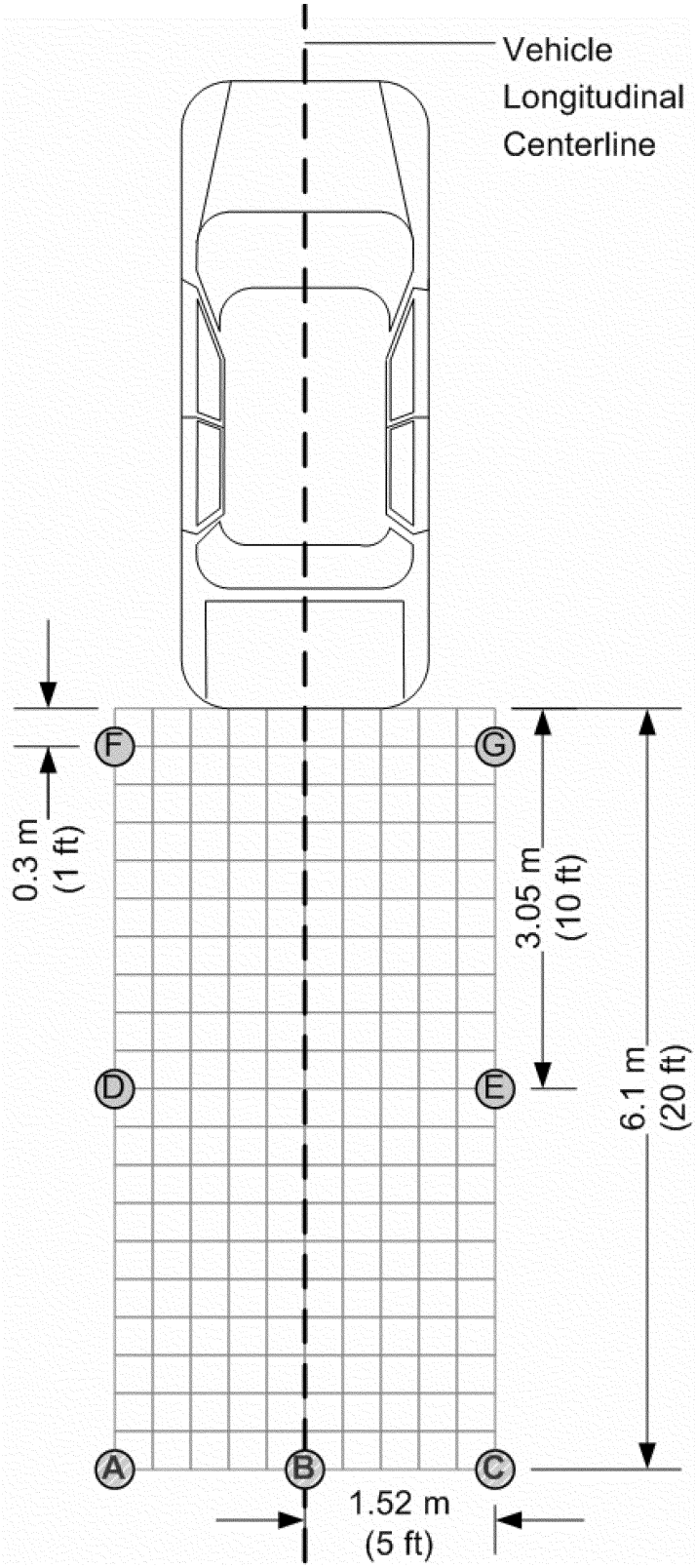

Figure 6. Countermeasure Performance Test Area Illustration and Required Test Object Locations

BILLING CODE 4910–59–C

3. On page 76244, in the third column, the introductory language of S5.5.1.1 references "S14.1 through

S14.2.3". The correct reference is to "S14.1 through S14.3.3".

4. On page 76245, in the first column, the introductory language of S5.5.1.2 references "S14.1 through S14.2.3". The correct reference is to "S14.1 through S14.3.3".

5. On page 76245, in the first column, the introductory language of S5.5.2 references "S14.2.1 through S14.2.3". The correct reference is to "S14.3.1 through S14.3.3".

6. On page 76245, in the third column, the third line of S6.2(a) contains the weight figure of "4.536 kg". The correct weight figure is "4,536 kg".

7. On page 76245, in the third column, the third line of S6.2(b) contains the weight figure of "4.536 kg". The correct weight figure is "4,536 kg".

8. On page 76246, in the first column, the sixth line of S6.2.3.2 contains the weight figure of "4.536 kg". The correct weight figure is "4,536 kg".

9. On page 76246, in the first column, the sixth line of S6.2.3.3 contains the weight figure of "4.536 kg". The correct weight figure is "4,536 kg".

10. On page 76245, in the third column, the introductory language of S6.2.1.1 references "S14.1 through S14.2.3". The correct reference is to "S14.1 through S14.3.3".

11. On page 76245, in the third column, the introductory language of S6.2.1.2 references "S14.1 through S14.2.3". The correct reference is to "S14.1 through S14.3.3".

12. On page 76246, in the first column, the introductory language of S6.2.2 references "S14.2.1 through S14.2.3". The correct reference is to "S14.3.1 through S14.3.3".

13. On page 76246, in the first column, the introductory language of S6.2.3.2 contains the percentage figure of "33 percent". The correct percentage is "10 percent".

14. On page 76246, in the first column, the introductory language of S6.2.3.3 contains the percentage figure of "67 percent". The correct percentage is "40 percent".

15. On page 76246, in the third column, the third line of S14.1.4 references "S14.1.5(a) through (d)". The correct reference is to "S14.1.4(a) through (d)".

16. On page 76246, in the third column, the first line of S14.1.4(a) references "cylinders G and F". The correct reference is to "cylinders F and G".

17. On page 76246, in the third column, the sixth line of S14.1.4(a) references "cylinders E and D". The correct reference is to "cylinders D and E".

18. On page 76247, in the first column, the eighth line of S14.1.4(a) contains the distance figure of "0.9 m". The correct distance figure is "3.05 m".

19. On page 76247, in the first column, the third line of S14.1.4(c) contains the distance figure "1.5 m". The correct distance figure is "1.52 m".

20. On page 76247, in the first column, the fourth line of S14.1.4(c) contains the direction "left". The correct direction is "right".

21. On page 76247, in the first column, the third line of S14.1.4(d) contains the distance figure "1.5 m". The correct distance figure is "1.52 m".

22. On page 76247, in the first column, the fourth line of S14.1.4(d) contains the direction "right". The correct direction is "left".

23. On page 76247, in the third column, the sixth and seventh lines of S14.3.3 contain the temperature range "176° ± 5° F (60° ± 3° C)". The correct temperature range is "176° ± 5° F (80° ± 3° C)".

24. On page 76248, Figure 5 is corrected to read as follows:

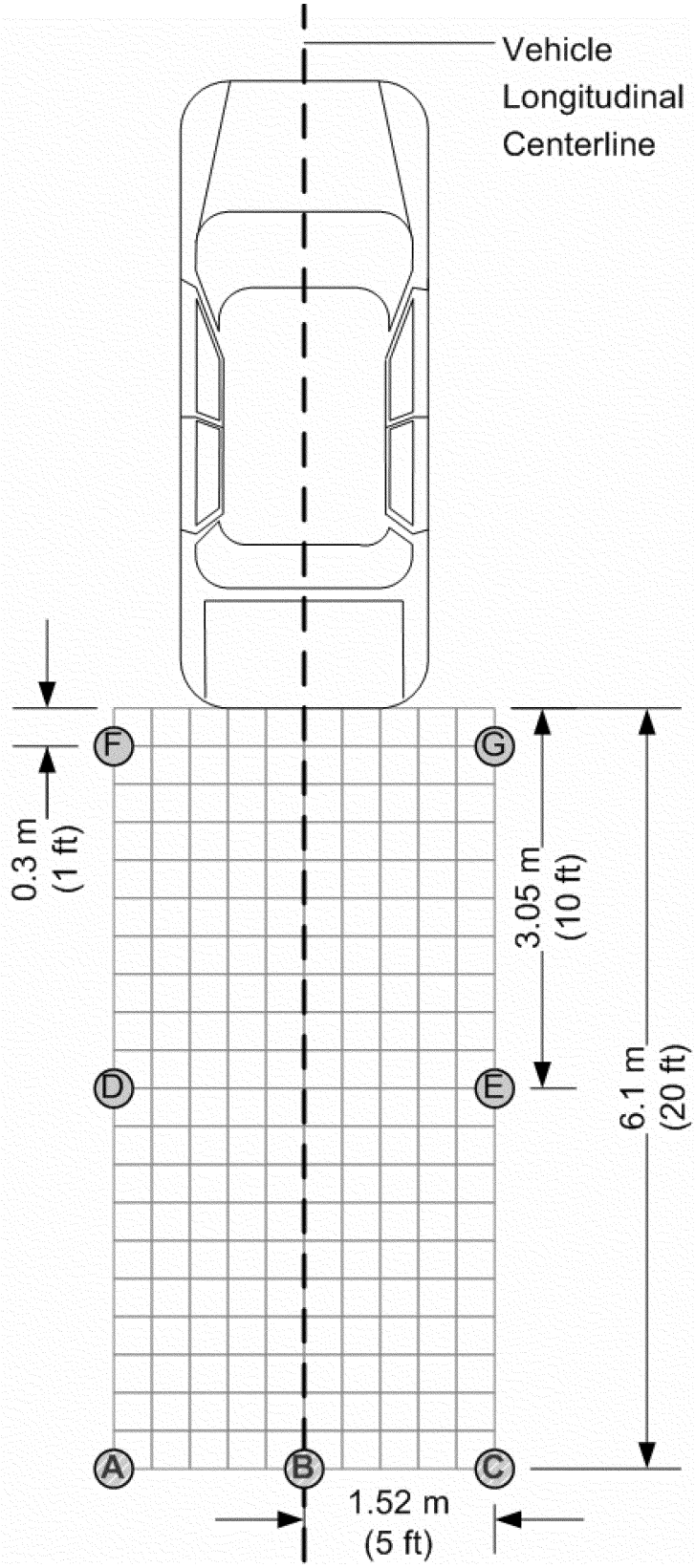

FIGURE 5: TEST CYLINDER LOCATIONS (Units in meters)

Issued on: February 24, 2011.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–4737 Filed 2–28–11; 11:15 am]

BILLING CODE 4910–59–C

Notices

Federal Register
Vol. 76, No. 41
Wednesday, March 2, 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 COMMERCE

Meeting of the National Advisory Council on Innovation and Entrepreneurship

AGENCY: Office of Innovation and Entrepreneurship, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship will hold a meeting on Tuesday, March 15, 2011. The meeting will be conducted from 9 a.m. to 12 p.m. and will be opened to the public via listen only conference call, as well as limited number of open seats, at the event. The Council was chartered on November 10, 2009, to advise the Secretary of Commerce on matters relating to innovation and entrepreneurship in the United States.

DATE: March 15, 2011.

TIME: 9 a.m.–12 p.m. (EST).

ADDRESSES: Public participation via a listen in conference number can be reached at 888–942–9574, and passcode, 6315042. Public participation is also available via a limited number of seats. For more information on open seating please reference *http://www.eda.gov/NACIE.* Please specify any requests for reasonable accommodation of auxiliary aids at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

SUPPLEMENTARY INFORMATION: Agenda topics to be discussed include: Briefings by outside experts, sub-committee updates and discussion, and Q & A with the audience. Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before and after the meeting. Comments may be submitted to Claire Brunner at the contact information indicated below. Copies of Board meeting minutes will be available within 90 days of the meeting.

FOR FURTHER INFORMATION CONTACT: Claire Brunner, Office of Innovation and Entrepreneurship, Room 7019, 1401 Constitution Avenue, NW., Washington, DC 20230, *telephone:* 202–482–2686, *e-mail: cbrunner@eda.doc.gov.* Please reference, "NACIE March 15, 2011" in the subject line of your e-mail.

Dated: February 24, 2011.

Paul J. Corson,

Office of Innovation and Entrepreneurship, U.S. Department of Commerce.

[FR Doc. 2011–4664 Filed 3–1–11; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[2/3/2011 through 2/23/2011]

Firm name	Address	Date accepted for investigation	Products
Boston Retail Products, Inc	400 Riverside Avenue, Medford, MA 02155.	07–Feb–11	The firm designs and manufactures a wide variety of custom and in-stock solutions for retail and non-retail environments. Their display, power and protection solutions include fixture, floor and wall damage protection, and home center merchandising.
Dependable Glass Works, Inc ..	509 E. Gibson Street, Covington, LA 70433.	11–Feb–11	The firm manufactures various products for industrial and home use out of tempered glass.
Gold Leaf Design Group	1300 S. Koster Ave, Chicago, IL 60623.	11–Feb–11	The firm designs, manufactures, and assembles decorative accessories and arts such as permanent botanical displays, decorative vessels, home décor products, and interior accents.
Lutco, Inc	677 Cambridge Street, Worcester, MA 01610.	11–Feb–11	The firm manufactures radial ball bearings, thrust ball bearings, housed bearing assemblies, flangettes/pillow blocks, metal stampings and custom products.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[2/3/2011 through 2/23/2011]

Firm name	Address	Date accepted for investigation	Products
Martin David, Inc	68–B Winter Street, Holyoke, MA 01040.	11–Feb–11	The firm manufactures machined parts and components such as assault rifle handguards, gun sights front and rear, sling and strap attachments for military weapons, and barrel nuts.
Paul Schurman Machine, Inc	23201 NE 10th Avenue (PO Box 999), Ridgefield, WA 98642.	11–Feb–11	The firm manufactures pulp and paper forming and centrifugal pump machinery and parts.
Precast Specialties Corporation	999 Adams Street (PO Box 86), Abington, MA 02351.	08–Feb–11	The firm custom manufacturers concrete architectural panels, curbs, hand holes, pull boxes, light bases, and bumper logs.
Richards Sheet Metal Works, Inc.	2680 Industrial Drive, Ogden, UT 84401.	14–Feb–11	The firm manufactures structural fabricated metal products for transportation, mining and industrial machinery.
Supreme Manufacturing Company, Inc. dba C&L Supreme.	1755 Birchwood Avenue, Des Plaines, IL 60018.	11–Feb–11	The firm manufactures precision machined CNC components for the packaging, scanning, and control industries.
Western Forms, Inc	6200 Equitable Rd, Kansas City, MO 64120–1312.	11–Feb–11	The firm manufactures aluminum concrete forming systems.

Any party having a substantial interest in these proceedings may request a public hearing on the matter.

A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: February 23, 2011.

Bryan Borlik,

Director.

[FR Doc. 2011–4625 Filed 3–1–11; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1744]

Grant of Authority for Subzone Status; Max Home, LLC (Upholstered Furniture); Fulton and Iuka, MS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Greater Mississippi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 158, has made application to the Board for authority to establish a special-purpose subzone at the upholstered furniture manufacturing facilities of Max Home, LLC located in Fulton and Iuka, Mississippi (FTZ Docket 41–2009, filed 8–3–2009; amended 3–12–2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 52454, 10–13–2009; 75 FR 12730, 3–17–2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restrictions listed below;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacture of upholstered furniture at the Max Home, LLC facilities located in Fulton and Iuka, Mississippi (Subzone 158F), as described in the application and **Federal Register** notices, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the following conditions:

1. The annual quantitative volume of foreign micro-denier suede upholstery fabric finished with a hot caustic soda solution that Max Home, LLC may admit to the proposed subzone under nonprivileged foreign status (19 CFR 146.42) is limited to 2.23 million square yards.

2. Max Home, LLC must admit all foreign-origin upholstery fabrics other than micro-denier suede fabric finished with a hot caustic soda solution to the proposed subzone under domestic (duty-paid) status (19 CFR 146.43).

3. For the purpose of monitoring by the FTZ Staff, Max Home, LLC shall submit additional operating information to supplement its annual report data.

4. The subzone authority for the Max Home, LLC facilities shall remain in effect for a period of five years from the date of approval by the FTZ Board.

Signed at Washington, DC, this 18th day of February 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–4672 Filed 3–1–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1745]

Grant of Authority for Subzone Status Klaussner Home Furnishings (Upholstered Furniture) Asheboro and Candor, NC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * *the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Piedmont Triad Partnership, grantee of Foreign-Trade Zone 230, has made application to the Board for authority to establish a special-purpose subzone at the upholstered furniture manufacturing facilities of Klaussner Home Furnishings located in Asheboro and Candor, North Carolina (FTZ Docket 59–2009, filed 12–16–2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 69329, 12–31–2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restrictions listed below;

Now, Therefore, the Board hereby grants authority for subzone status for activity related to the manufacture of upholstered furniture at the Klaussner Home Furnishings facilities located in Asheboro and Candor, North Carolina (Subzone 230D), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the following conditions:

1. The annual quantitative volume of foreign micro-denier suede upholstery fabric finished with a hot caustic soda solution that Klaussner Home Furnishings may admit to the proposed subzone under nonprivileged foreign status (19 CFR 146.42) is limited to 5.79 million square yards.

2. Klaussner Home Furnishings must admit all foreign-origin upholstery fabrics other than micro-denier suede fabric finished with a hot caustic soda solution to the proposed subzone under domestic (duty-paid) status (19 CFR 146.43).

3. For the purpose of monitoring by the FTZ Staff, Klaussner Home Furnishings shall submit additional operating information to supplement its annual report data.

4. The subzone authority for the Klaussner Home Furnishings facilities shall remain in effect for a period of five years from the date of approval by the FTZ Board.

Signed at Washington, DC, this 18 day of February 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–4673 Filed 3–1–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA222

Gulf Spill Restoration Planning; Public Scoping Meetings for the Programmatic Environmental Impact Statement for the Deepwater Horizon Oil Spill

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

ACTION: Notice; public scoping meetings.

SUMMARY: In a February 17, 2011, **Federal Register** notice, the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) announced in a notice of intent that it, on behalf of the Trustee Council, will begin restoration scoping and preparation of a Programmatic Environmental Impact Statement (PEIS) for the Deepwater Horizon Oil Spill that began on April 20, 2010, Mississippi Canyon Block 252 ("the Oil Spill"). The notice announced NOAA's intent to hold public scoping meetings in eleven (11) locations in the five Gulf of Mexico States and in Washington, DC, but it did not include meeting details. The meeting details for these locations are available now.

The purpose of the Gulf Spill Restoration Planning PEIS is to identify restoration types and establish a programmatic framework and procedures that will enable the Trustees to expedite the selection and implementation of restoration projects to compensate the public and the environment for loss of natural resources and services from the Oil Spill.

DATES: All public scoping meetings will begin at 7:30 p.m. (local time) and doors will open at 6:30 p.m., except in Grand Isle, Houma, and Morgan City, Louisiana, which will start at 6:30 p.m. and open doors at 5:30 p.m. For scoping meetings dates and locations see Scoping Meetings under the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Written scoping comments on suggested restoration types should be sent to: NOAA Restoration Center, Attn: DWH PEIS Comments, 263 13th Avenue South, Suite 166, St. Petersburg, FL 33701. Electronic comments are strongly encouraged, and can be submitted to *http://www.gulfspillrestoration.noaa.gov.* All written comments must be received by the close of the scoping process to be considered. Scoping will close 90 days after the February 17, 2011 NOI, on Tuesday, May 18, 2011. A public announcement will be provided in a future **Federal Register** document to remind the public at the end of the scoping period.

FOR FURTHER INFORMATION CONTACT:

NOAA—Brian Hostetter at 888.547.0174 or by e-mail at *gulfspillcomments@noaa.gov;*
DOI—Robin Renn by e-mail at *Robin_Renn@fws.gov;*
AL— Will Gunter by e-mail at *William.Gunter@dcnr.alabama.gov;*
FL—Lee Edminston or Gil McRae by e-mail at *Lee.Edminston@dep.state.fl.us* or *Gil.McRae@myfwc.com;*
LA—Karolien Debusschere by e-mail at *karolien.debusschere@la.gov;*
MS—Richard Harrell by e-mail at *Richard_Harrell@deq.state.ms.us;*
TX—Don Pitts by e-mail at *Don.Pitts@tpwd.state.tx.us.*

To be added to the Oil Spill PEIS mailing list, please visit: *www.gulfspillrestoration.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Scoping Meetings

The meetings have been scheduled for:

1. Wednesday, March 16, 2011: Escambia County Central Office Complex, 3363 West Park Place, Pensacola, FL. This is across the street from the Escambia County Health Department at 1295 West Fairfield Drive in Pensacola, FL.
2. Thursday, March 17, 2011: Bay County Government Center, County Commissioner Chambers, 840 W. 11th Street, Panama City, FL.
3. Monday, March 21, 2011: The Donald Snyder Community Center, Main Floor, 2520 Pass Rd., Biloxi, MS.
4. Tuesday, March 22, 2011: Belle Chasse Public Library, 8442 Highway 23, Belle Chasse, LA.
5. Wednesday, March 23, 2011: Five Rivers—Alabama's Delta Resource Center, 30945 Five Rivers Blvd., Spanish Fort, AL.
6. Thursday, March 24, 2011: Houma-Terrebonne Civic Center, 346 Civic Center Blvd., Houma, LA.
7. Monday, March 28, 2011: The Grand Isle Community Center, 3811 Highway 1, Grand Isle, LA.
8. Tuesday, March 29, 2011: Holiday Inn, 520 Roderick St., Morgan City, LA.
9. Wednesday, March 30, 2011: Port Arthur Civic Center, 3401 Cultural Center Drive, Port Arthur, TX.
10. Thursday, March 31, 2011: Texas A & M at Galveston Ocean and Coastal Studies Building, Seawolf Parkway, Bldg. 3029, Galveston, TX.
11. Monday, April 4, 2011: U.S. Department of Commerce, Herbert Hoover Bldg. Auditorium, 1401 Constitution Ave., NW., Washington, DC.

National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is the lead agency for the preparation of the PEIS on behalf of United States Department of the Interior (on behalf of the Fish and Wildlife Service, the National Park Service, the Bureau of Land Management and the Bureau of Indian Affairs) ("DOI"); the Louisiana Coastal Protection and Restoration Authority, the Louisiana Oil Spill Coordinator's Office, the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries, and the Louisiana Department of Natural Resources, for the State of Louisiana; the Mississippi Department of Environmental Quality, for the State of Mississippi; the Alabama Department of Conservation and Natural Resources and the Geological Survey of Alabama, for the State of Alabama; the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission for the State of Florida; and the Texas Parks and Wildlife Department, Texas General Land Office, and the Texas Commission on Environmental Quality, for the State of Texas. The notice of intent to begin restoration scoping and prepare a Programmatic Environmental Impact Statement published at 76 FR 9327, February 17, 2011.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* and the Council on Environmental Quality regulations implementing NEPA under 40 CFR Chapter V applies to restoration actions by Federal trustees. The Federal and state Trustees will be developing a PEIS to help guide restoration actions associated with the Natural Resource Damage Assessment (NRDA) for the Oil Spill. The PEIS will assess the environmental, social, and economic attributes of the affected environment and the potential consequences of alternative actions to restore, rehabilitate, replace, or acquire the equivalent of natural resources and services potentially injured by the spill. A PEIS may generally be prepared to evaluate actions that encompass a large geographic scale. Tiered analyses considering particular restoration actions may be required in the future as specific plans for implementing particular alternatives are established.

The purpose of the scoping process is to identify the concerns of the affected public and for the Federal agencies, states, and Indian tribes to involve the public early in the decision making process, facilitate an efficient PEIS preparation process, define the issues and alternatives that will be examined in detail, and save time by ensuring that draft documents adequately address relevant issues. The scoping process reduces paperwork and delay by ensuring that important issues are addressed early. Following the scoping process, the Trustees will prepare a draft PEIS, at which time the public will be encouraged to comment on the document. Similar to the scoping process, public comment meetings will be held at that time to gather oral and written public input on the draft PEIS.

In compliance with 15 CFR 990.45, the Trustees will prepare an Administrative Record (AR). The AR will include documents that the Trustees relied on during the development of the PEIS. After preparation, the Record will be on file at the NOAA Restoration Center in Silver Spring, MD, and duplicate copies will be maintained at the following Web site: *http://www.darrp.noaa.gov/.* The specific web page will be provided in the next public notice.

The draft PEIS document is intended to be released for public comment by Fall/Winter, 2011. Specific dates and times for future events will be publicized when scheduled.

Dated: February 23, 2011.

Patricia A. Montanio,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2011–4540 Filed 3–1–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Climate Assessment Development and Advisory Committee; Request for Nominations and Notice of Meeting

AGENCY: National Oceanic and Atmospheric Administration; Department of Commerce.

ACTION: Request for nominations to the National Climate Assessment Development and Advisory Committee; Notice of Public Meeting.

SUMMARY: This notice requests nominations of qualified individuals for the National Climate Assessment Development and Advisory Committee (NCADAC) and advises the public of an upcoming meeting of the NCADAC, pending final approval of its members. Individuals may self-nominate. Nominations received will be evaluated and, if appropriate to the overall composition of the committee, accepted. The NCADAC will meet on April 4, 2011, from 9 a.m. to 6 p.m.; April 5, 2011, from 8 a.m. to 6 p.m.; and April 6, 2011, from 8 a.m. to 2 p.m.

DATES: Nominations Deadline: Nominations must be received by March 16, 2011.

Public Comment Deadline: Public comments must be received by the NCADAC Designated Federal Official (DFO) by 12 p.m. on March 31, 2011, to provide sufficient time for distribution to the members prior to the meeting. Written comments received after 12 p.m. on March 31, 2011, will be distributed to the NCADAC, but may not be reviewed prior to the meeting date.

NCADAC Meeting Date, Time and Location: The NCADAC will meet April 4–6, 2011, at the following times: April 4, 2011, from 9 a.m. to 6 p.m.; April 5, 2011, from 8 a.m. to 6 p.m.; and April 6, 2011, from 8 a.m. to 2 p.m.. The location will be in the metro

Washington, DC, area and will be announced at *http://globalchange.gov/what-we-do/assessment/notices.* The meeting may have limited seating capacity; seats are available on a first come-first served basis. For more information about the meeting, *see* the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Responses to this request for nominations must be submitted electronically at *http://globalchange.gov/what-we-do/assessment/notices.* Any member of the public who wishes to submit oral or written comments should contact: Dr. Kandis Wyatt, the NCADAC Designated Federal Official (DFO), NESDIS, SSMC1 Room 8330, 1335 East-West Highway, Silver Spring, Maryland 20910; telephone (240) 429–0512, *e-mail: Kandis.Wyatt@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact: Dr. Kandis Wyatt, the NCADAC Designated Federal Official (DFO), NESDIS, SSMC1 Room 8330, 1335 East-West Highway, Silver Spring, Maryland 20910; telephone (240) 429–0512, *e-mail: Kandis.Wyatt@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Advisory Committee

The National Climate Assessment (NCA) is required by the Global Change Research Act of 1990. The Secretary of Commerce has established the NCADAC to produce a NCA that synthesizes and summarizes the science and information pertaining to current and future impacts of climate change upon the United States; and to provide advice and recommendations toward the development of an ongoing, sustainable national assessment of global change impacts and adaptation and mitigation strategies for the Nation.

Once members are appointed, the NCADAC will work with assessment staff, agencies and external experts to generate inputs to the assessment process that come from a variety of sources—for example, government observing systems, peer reviewed literature, and information about existing social and physical stresses within regions and sectors. The NCADAC is charged both with writing the report that is due to the President and Congress, and with helping to build a permanent national process to document changes in climate, its impacts and associated global changes over time. Among the proposed approaches is establishing a series of national indicators of change.

Through this **Federal Register** Notice, the Department of Commerce solicits nominations for the NCADAC. Since the NCADAC will provide advice about the process of assessment as well as write a report, a very wide range of expertise is required. In considering potential members of this committee, persons with the following types of expertise were sought: Sectoral expertise, including the natural environment, agriculture and forestry, energy, land cover and land use, water resources, transportation, health, human social systems, biodiversity, coastal and marine resources; systems expertise including oceans, atmosphere, biogeochemical cycles, etc.; climate modeling, climate impacts, atmospheric science, land use and land cover change; assessment process experts, including people who are familiar with economic assessment and valuation, vulnerability assessment, adaptation, mitigation, and integrated assessment; international issues and assessment components; data systems development and management; communications, stakeholder engagement and public processes; urban systems and infrastructure; homeland security; environmental justice and cultural resources and indigenous perspectives. Persons with a range of perspectives are sought, including people with experience in private industry, state, local, and regional government, academia, and non-governmental organizations, and drawn from a broad geographic distribution.

Nominations must include a no more than two-page resume outlining the qualifications, experience and education of the individual being nominated, as well as a paragraph describing how the individual will strengthen the ability of the committee to meet its charge, relative to the charter for the NCADAC at *http://globalchange.gov/what-we-do/assessment/charter* and list of expertise requirements included in this **Federal Register** Notice. Nominees should have the ability to work effectively in a committee process, be prepared for a government clearance review, and expect to dedicate significant time to NCADAC activities. Members of the committee are not compensated for their time, but their travel expenses associated with attending committee meetings are reimbursed. Information obtained as a result of this request may be used by the government for program planning on a non-attribution basis. Do not include any information that might be considered proprietary or confidential.

NCADAC Meeting

The NCADAC will meet on April 4–6, 2011, at the following times: April 4, 2011, from 9 a.m. to 6 p.m.; April 5, 2011, from 8 a.m. to 6 p.m.; and April 6, 2011, from 8 a.m. to 2 p.m. During this public meeting, the NCADAC will discuss initial plans for development of a first draft of the NCADAC's Report to Congress and the President, as well as advising on the development of the Assessment process.

The proposed approach to the Assessment and a draft outline of a report to be prepared in 2013 was published in a **Federal Register** Notice dated September 7, 2010, and available at *http://www.globalchange.gov/what-we-do/assessment/.* The Interim strategic plan for the NCA is available at *http://globalchange.gov/what-we-do/assessment/strategic-plan.* The Charter for the Assessment was published in a **Federal Register** Notice dated December 27, 2010, and is available at *http://globalchange.gov/what-we-do/assessment/charter.*

The NCA outline will evolve over the coming months and years in response to continued input from experts, peer review, and the public. In the months after the first meeting of the NCADAC, another **Federal Register** Notice will be issued that provides an updated outline and timeframe for the NCA process.

There are multiple ways that the Assessment provides opportunities for public comment and engagement. They include public meetings, an e-newsletter that provides an update on Assessment activities every 6 weeks, a Web site that is regularly updated, and **Federal Register** Notices.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12 p.m. on March 30, 2011, to Dr. Kandis Wyatt, the NCADAC Designated Federal Official (DFO), NESDIS, SSMC1 Room 8330, 1335 East-West Highway, Silver Spring, Maryland 20910; telephone (240) 429–0512, *e-mail: Kandis.Wyatt@noaa.gov.*

Additional Information and Public Comments: The NCADAC meeting will be open to public participation and will include a 30-minute public comment period on April 5, 2011, from 9 a.m. to 9:30 a.m. (Please check the www.globalchange.gov/what-we-do/assessment/notices Web site to confirm this time). Each individual or group requesting to make a verbal presentation will be limited to a total time of five (5) minutes. If there are no prior requests to speak, or time remains in the public comment period, there will be a call to the audience for comments, limited to 5 minutes each. Written comments will also be accepted and 50 paper copies as well as an electronic version should be

received by the NCADAC Designated Federal Official (DFO) by 12 p.m. on March 31, 2011, to provide sufficient time for distribution to the members prior to the meeting. Written comments received after 12 p.m. on March 31, 2011, will be distributed to the NCADAC, but may not be reviewed prior to the meeting date. Seats will be available to the public on a first-come, first-served basis.

Proposed Nominees to the NCADAC

Biographies of proposed nominees of the NCADAC are available at *http://globalchange.gov/what-we-do/assessment/proposedFACmembers.*

Non-Federal

Daniel Abbasi, Mission Point Capital Partners
Dr. E. Virginia Armbrust, University of Washington
Dr. Rosina Bierbaum, University of Michigan
Maria Blair, Rockefeller Foundation
James Buizer, Arizona State University
Dr. Lynne Carter, Louisiana State University
Dr. F. Stuart Chapin III, University of Alaska
Dr. Camille Coley, Florida Atlantic University
Jan Dell, P.E., CH2MHill
Plácido dos Santos, Arizona Department of Water Resources (ret)
Guido Franco, California Energy Commission
Mary Gade, Gade Environmental Group, LLC
Dr. Aris Georgakakos, Georgia Institute of Technology
Dr. David Hales, College of the Atlantic
Dr. Mark Howden, Australian Commonwealth Scientific and Industrial Research Organisation
Dr. Peter Kareiva, The Nature Conservancy
Dr. Kenneth Kunkel, North Carolina State University and NOAA Cooperative Institute for Climate and Satellites
Dr. Rattan Lal, The Ohio State University
Dr. Arthur Lee, Chevron Corporation
Dr. Jo-Ann Leong, University of Hawai'i
Dr. Diana Liverman, University of Arizona and Oxford University
Dr. Edward Maibach, George Mason University
Dr. Jerry Melillo, Marine Biological Laboratory
Dr. Susanne Moser, Susanne Moser Research & Consulting, Stanford University, and University of California-Santa Cruz
Dr. Richard Moss, Joint Global Change Research Institute, Pacific Northwest National Laboratory and University of Maryland
Dr. Philip Mote, Oregon State University
Dr. Marie O'Neill, University of Michigan
Terese Richmond, Gordon Derr, LLP
Dr. Andrew Rosenberg, University of New Hampshire and Conservation International
Dr. Richard Schmalensee, Massachusetts Institute of Technology
Joel Smith, Stratus Consulting
Dr. Donald Wuebbles, University of Illinois
Dr. Gary Yohe, Wesleyan University

Federal Ex-Officio

Dr. John Balbus, Department of Health and Human Services
William Breed, U.S. Agency for International Development
Dr. Gary Geernaert, Department of Energy
Dr. John Hall, Department of Defense
Alice Hill, Department of Homeland Security (pending charter revision)
Dr. Len Hirsch, Smithsonian Institution
Dr. Patricia Jacobberger-Jellison, National Aeronautics and Space Administration
Thomas Karl, Subcommittee on Global Change Research and National Oceanic and Atmospheric Administration
Cathleen Kelly, White House Council on Environmental Quality and Adaptation Task Force (pending charter revision)
Dr. Chester Koblinsky, National Oceanic and Atmospheric Administration
Linda Lawson, Department of Transportation
Dr. Robert O'Connor, National Science Foundation
Dr. Jonathan Pershing, Department of State
Dr. Michael Slimak, Environmental Protection Agency
Dr. Alan Thornhill, Department of the Interior
Dr. Margaret Walsh, U.S. Department of Agriculture

Dated: February 23, 2011.

Gary Locke,

Secretary of Commerce.

[FR Doc. 2011–4562 Filed 3–1–11; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Native American Tribal Insignia Database.

Form Number(s): None.

Agency Approval Number: 0651–0048.

Type of Request: Revision of a currently approved collection.

Burden: 5 hours annually.

Number of Respondents: 8 responses per year.

Avg. Hours Per Response: The USPTO estimates that a recognized Native American tribe will require an average of 30 minutes (0.5 hours) to complete a request to record an official insignia, including time to prepare the appropriate documents and submit the completed request to the USPTO.

Needs and Uses: The Trademark Law Treaty Implementation Act of 1998 (Pub. L. 105–330, § 302, 112 Stat. 3071) required the USPTO to study issues surrounding the protection of the official insignia of federally and state-recognized Native American tribes under trademark law. At the direction of Congress, the USPTO created a database containing the official insignia of recognized Native American tribes.

The insignia database serves as a reference for examining attorneys when determining the registrability of a mark that may falsely suggest a connection to the official insignia of a Native American tribe. The entry of an official insignia into the database does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. 1051 *et seq.*

This information collection is used by the USPTO to enter an official insignia submitted by a federally or state-recognized Native American tribe into the database. There are no forms associated with this collection.

Affected Public: Tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail:* *InformationCollection@uspto.gov.* Include "0651–0048 copy request" in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information

Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before April 1, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: February, 24, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–4559 Filed 3–1–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Proposed Information Collection Requirements Under OMB Review; Certain Patent Petitions Requiring a Fee

ACTION: Notice; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a currently approved collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 2, 2011.

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

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0059 Patent Petitions Requiring a Fee under 37 CFR 1.17(f)–(h) comment" in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, U.S. Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313–1450; by telephone 571–272–7728; or by e-mail at *raul.tamayo@uspto.gov* with "Paperwork" in the subject line.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 *et seq.* to examine an application for patent and, when appropriate, issue a patent. Many actions taken by the USPTO during its examination of an application for patent or for reissue of a patent, or during its reexamination of a patent, are subject to review by an appeal to the Board of Patent Appeals and Interferences. For other USPTO actions, review is in the form of administrative review obtained via submission of a petition to the USPTO. USPTO petitions practice also provides an opportunity for a patent applicant or owner to supply additional information that may be required in order for the USPTO to further process an application or patent.

Currently, this collection covers certain petitions which, when submitted to the USPTO by a patent applicant or owner, are required to be accompanied by the fee set forth in 37 CFR 1.17(f). The USPTO has determined that it would be beneficial to group other petitions which require a fee under 37 CFR 1.17 together with the petitions currently in this collection. Specifically, the USPTO proposes to transfer out of 0651–0031 and into this collection petitions which are required to be accompanied by the fee set forth in either 37 CFR 1.17 (g) or (h), including, for example, petitions for requests for documents in a form other than that provided by 37 CFR 1.19, petitions to make special under the accelerated examination program, petitions for express abandonment to avoid publication under 37 CFR 1.138(c), and petitions for extension of time under 37 CFR 1.136(b). For a complete listing of the items covered by this collection, please see the table in Section III of this notice.

The petitions in this collection can be submitted electronically through EFS–Web, the USPTO's web-based electronic filing system, as well as on paper. The USPTO is taking this opportunity to account for the electronic submissions in this collection.

Currently this collection has one form. There are forms associated with the petitions for extension of time under 37 CFR 1.136(b) (PTO/SB/23), petitions to make special under the accelerated examination program (PTO/SB/28), petitions for express abandonment to avoid publication under 37 CFR 1.138(c) (PTO/SB/24A), and petitions to withdraw an application from issue after payment of the issue fee under 37 CFR 1.313(c) (PTO/SB/140). Therefore, after approval, this collection will have five forms. Please note that there are some petitions to withdraw which cannot be submitted using PTO/SB/140. None of the other petitions in this collection has a form associated with it. The filing fee for petitions with no associated form may be remitted to the USPTO using PTO/SB/17p, which is titled "Petition Fee Under 37 CFR 1.17(f), (g), and (h) Transmittal."

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO when the applicant files the various petitions. These papers can also be filed as attachments through EFS-Web. The petitions to make special under the accelerated examination program can only be filed through EFS-Web.

III. Data

OMB Number: 0651–0059.

Form Number(s): PTO/SB/17P, PTO/SB/23, PTO/SB/24a, PTO/SB/28 (EFS-Web only), and PTO/SB/140.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for profit; non-profit institutions.

Estimated Number of Respondents: 39,015 responses per year. Of this total, the USPTO expects that 35,154 responses will be submitted through EFS-Web.

Estimated Time per Response: The USPTO estimates that it will take approximately 5 minutes (0.08 hours) to 12 hours to complete the items in this collection, depending on the petition. This includes time to gather the necessary information, create the documents, and submit the completed request to the USPTO. The USPTO calculates that, on balance, it takes the same amount of time to gather the necessary information, prepare the petitions and the fee transmittal form, and submit them to the USPTO, whether the applicant submits the petition in paper form or electronically.

Estimated Total Annual Respondent Burden Hours: 41,907 hours.

Estimated Total Annual Respondent Cost Burden: $13,616,730. The USPTO expects that attorneys will complete all of the items in this collection, with the exception of the petitions for requests for documents in a form other than that provided by 37 CFR 1.19 and petitions for express abandonment to avoid publication under 37 CFR 1.138(c). The USPTO expects that these petitions will be completed by para-professionals. Using the professional hourly rate of $325 for attorneys in private firms, and

an hourly rate of $122 for the para-professionals, the USPTO estimates $13,616,730 per year for salary costs associated with respondents.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Petitions (corresponding to the fee) under 37 CFR 1.17(f) include: Petition to Accord a Filing Date under 1.57(a); Petition to Accord a Filing Date under 1.53(e); Petition for Decision on a Question Not Specifically Provided For; Petition to Suspend the Rules.	4 hours	400	1,600
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(f)	4 hours	3,200	12,800
Petitions (corresponding to the fee) under 37 CFR 1.17(g): Petition to Access an Assignment Record; Petition for Access to an Application; Petition for Expungement and Return of Information; Petition to Suspend Action in an Application.	2 hours	400	800
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(g)	2 hours	3,500	7,000
Petitions (corresponding to the fee) under 37 CFR 1.17(h): Petition for Accepting Color Drawings or Photographs; Petition for Entry of a Model or Exhibit; Petition to Withdraw an Application from Issue PTO/SB/140; Petition to Defer Issuance of a Patent.	1 hour	1,100	1,100
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(h)	1 hour	10,300	10,300
Petitions for Requests for Documents in a Form Other than that Provided by 37 CFR 1.19.	1 hour	5	5
EFS-Web Petitions for Requests for Documents in a Form Other than that Provided by 37 CFR 1.19.	1 hour	50	50
Petitions to Make Special Under Accelerated Examination Program PTO/SB/28 (EFS-Web Only).	12 hours	550	6,600
Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c) PTO/SB/24a.	12 minutes	50	10
EFS-Web Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c).	12 minutes	500	100
Petition for Extension of Time Under 37 CFR 1.136(b) PTO/SB/23	30 minutes	6	3
EFS-Web Petition for Extension of Time Under 37 CFR 1.136(b)	30 minutes	54	27
Petition Fee under 37 CFR 1.17(f), (g), and (h) Transmittal PTO/SB/17P	5 minutes	1,900	152
EFS-Web Petition Fee under 37 CFR 1.17(f), (g), and (h) Transmittal	5 minutes	17,000	1,360
TOTALS		39,015	41,907

Estimated Total Annual Non-Hour Respondent Cost Burden: $3,875,424.

There are no capital start-up, operation, or maintenance costs associated with this information collection. There are, however, postage costs and filing fees.

The public may submit the petitions in this collection to the USPTO by mail through the United States Postal Service. All correspondence may include a certificate of mailing for each piece of correspondence enclosed, stating the date of deposit or transmission to the USPTO in order to receive credit for timely filing. The USPTO has estimated that the vast majority of these submissions will weigh no more than 13 oz. Therefore, the USPTO is conservatively estimating that these submissions will be mailed in large mailing envelopes by first-class postage at a rate of $2.92. Postage for the certificates of mailing themselves are not calculated into this estimate as they are included with the individual pieces of correspondence that are being deposited with the United States Postal Service. The USPTO estimates that 1,961 petitions and 1,900 fee transmittal forms will be mailed to the USPTO per year, for a total postage cost of $11,274.

This collection has a minimum of $3,864,150 in associated filing fees, as shown in the accompanying table:

Item	Responses (a)	Filing Fee ($) (b)	Total non-hour cost burden (a × b) (c)
Petitions (corresponding to the fee) under 37 CFR 1.17(f) include: Petition to Accord a Filing Date under 1.57(a); Petition to Accord a Filing Date under 1.53(e); Petition for Decision on a Question Not Specifically Provided For	400	$400.00	$160,000.00
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(f)	3,200	400.00	1,280,000.00
Petitions (corresponding to the fee) under 37 CFR 1.17(g): Petition to Access an Assignment Record; Petition for Access to an Application; Petition for Expungement and Return of Information; Petition to Suspend Action in an Application	400	200.00	80,000.00
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(g)	3,500	200.00	700,000.00
Petitions (corresponding to the fee) under 37 CFR 1.17(h): Petition for Accepting Color Drawings or Photographs; Petition for Entry of a Model or Exhibit; Petition to Withdraw an Application from Issue PTO/SB/140; Petition to Defer Issuance of a Patent	1,100	130.00	143,000.00
EFS-Web Petitions (corresponding to the fee) under 37 CFR 1.17(h)	10,300	130.00	1,339,000.00
Petitions for Requests for Documents in a Form Other than that Provided by 37 CFR 1.19	5	130.00	650.00

Item	Responses (a)	Filing Fee ($) (b)	Total non-hour cost burden (a × b) (c)
EFS-Web Petitions for Requests for Documents in a Form Other than that Provided by 37 CFR 1.19	50	130.00	6,500.00
Petitions to Make Special Under Accelerated Examination Program (EFS-Web only) PTO/SB/28 (EFS-Web only)	550	130.00	71,500.00
Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c) PTO/SB/24a	50	130.00	6,500.00
EFS-Web Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138(c)	500	130.00	65,000.00
Petition for Extension of Time Under 37 CFR 1.136(b) PTO/SB/23	6	200.00	1,200.00
EFS-Web Petition for Extension of Time Under 37 CFR 1.136(b)	54	200.00	10,800.00
Petition Fee under 37 CFR 1.17(f), (g), and (h) Transmittal PTO/SB/17	1,900	None	0.00
EFS-Web Petition Fee under 37 CFR 1.17(f), (g), and (h) Transmittal	17,000	None	0.00
TOTALS	39,015		3,864,150.00

The USPTO estimates that the total non-hour respondent cost burden for this collection in the form of postage costs and filing fees amounts to $3,875,424.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 24, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–4456 Filed 3–1–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–T–2010–0090]

Coding of Design Marks in Registrations

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office ("USPTO") is discontinuing the practice of coding newly registered trademarks that include a design element with design mark codes based on the old paper search designations. The USPTO will continue to code all pending applications that contain a design element using a numerical design code system modeled after the International Classification of the Figurative Elements of Marks ("USPTO Design Classification").

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272–8742.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 35 U.S.C. 41(i)(1)–(2), the USPTO maintains a publicly available searchable collection of all United States trademark registrations in electronic form.

On December 28, 2010, the USPTO published a notice and request for comments at 75 FR 81587, proposing to discontinue a secondary system of coding designs contained in registered marks. The USPTO received only one comment, from an organization supporting the proposed discontinuation and encouraging the USPTO to use the cost savings to develop and support electronic initiatives. This comment is posted on the Office's Web site at *http://www.uspto.gov/trademarks/law/FR_Notices_2010.jsp* and is addressed below.

The proposed discontinuation of the secondary system, the Trademark Search Facility Classification Code Index ("TC Index"), stems from its inferiority to the primary system of design coding, which is much more specific, precise and robust; the infrequent use of the TC Index codes in searches by the public; and its costliness to maintain, especially in proportion to the low usage of the system. The assignment of TC Index codes to active U.S. trademark registrations in the searchable electronic database costs approximately $531,000 per fiscal year for staffing, systems maintenance, and support costs.

Changes: USPTO Discontinuing TC Index Coding

In view of the lack of any public comments opposing the discontinuation and the public comment supporting it, the USPTO is discontinuing the practice of design coding newly registered trademarks with TC Index codes. Terminating the dual design-coding system will result in cost savings and will free the USPTO staff to perform more valuable services for the public.

All existing registrations coded with paper search designations will remain available in the Trademark Electronic Search System ("TESS") and on microfilm. The USPTO has updated TESS Help to reflect that searching by the TC Index code will only retrieve registrations coded from August 28, 2007, through January 31, 2011. The USPTO strongly advises all users to rely solely on the primary system, Design Search Code ("DC") field, in TESS when performing searches for pending applications and active registrations for marks that include a design element. The USPTO will continue to code all pending applications that contain a design element with the USPTO Design Classification shown in the DC field. Examining attorneys will continue to rely solely on the USPTO Design Classification for examining and approving applications for marks with design codes for Federal registration.

Comment: The commenter supports the USPTO's decision to discontinue the TC Index and encourages the USPTO to redirect the resulting cost savings to assist users in electronic environments such as the Trademark Next Generation program.

Response: Eliminating the TC Index coding will allow the USPTO to devote more of its limited resources to the maintenance and improvement of the USPTO Design Classification system, which provides the public with more precise search parameters than are possible with the TC Index codes. It will also allow the USPTO to devote more resources to enhancing electronic communications through the Trademarks Next Generation information technology initiative. In connection with this initiative, the USPTO is currently reviewing suggestions for improvements to the electronic systems and will begin implementing many of them in the coming months.

The USPTO invests heavily in its publicly available electronic search systems to ensure their maintenance, and commits considerable resources to enhancing and improving electronic search capabilities. The USPTO is dedicated to ensuring the quality and accuracy of design coding under the USPTO Design Classification system. The USPTO Design Classification codes will continue to be subject to internal quality review and external review by applicants, registrants and the public, which further ensures correct design coding.

Accordingly, the USPTO hereby gives notice that the USPTO is discontinuing coding design marks with paper search designations.

Dated: February 24, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–4618 Filed 3–1–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR–N–2011–01; Docket No. 2011–0083; Sequence 1]

Federal Transition To Secure Hash Algorithm (SHA)–256

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting.

SUMMARY: The Civilian Agency Acquisition Council, and the Defense Acquisition Regulations Council (Councils), are hosting the first of at least two public meetings to start a dialogue with industry and Government agencies about ways for the acquisition community to transition to Secure Hash Algorithm SHA–256. SHA–256 is a cryptographic hash function that is used in digital signatures, and authentication protocols.

DATES: *Public Meeting:* A public meeting will be held on March 18, 2011, from 9 a.m. to 12 p.m. EST. Attendees should register for the public meeting at least 1 week in advance to ensure adequate room accommodations.

Registrants will be given priority if room constraints require limits on attendance. At the March 18th meeting, two briefings will be provided on SHA–256. One will be at the agency level, and the other at the Federal level. Public comments will be solicited after a subsequent second public meeting.

Special Accommodations: The public meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Edward Loeb, telephone (202) 501–0650, at least 5 working days prior to the meeting date.

ADDRESSES: *Public Meeting:* The public meeting will be held in the General Services Administration (GSA) Multipurpose Room, 2nd floor, One Constitution Square, 1275 First Street, NE., Washington, DC 20417. Interested parties may register by faxing the following information to the GSA at (202) 501–4067, or e-mail *edward.loeb@gsa.gov* by March 11, 2011:

(1) Company or Organization Name;
(2) Names of persons attending; and
(3) Last four digits of the social security number of persons attending.

Please cite "Federal Transition to Secure Hash Algorithm SHA–256" in all correspondence related to this public meeting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward Loeb, Procurement Analyst, at (202) 501–0650. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite "Federal Transition to Secure Hash Algorithm SHA–256."

SUPPLEMENTARY INFORMATION: The Federal environment uses SHA–1 for generating digital signatures. Current information systems, Web servers, applications and workstation operating systems were designed to process, and use SHA–1 generated signatures. National Institute of Standards and Technology (NIST) SP (Special Publication) 800–57, Recommendation for Key Management—Part 1, (the first document); and NIST SP 800–78–3, Cryptographic Algorithms and Key Sizes for Personal Identification Verification (PIV), at *http://csrc.nist.gov/publications/PubsSPs.html,* provide for the use of SHA–256 in all digital signatures generated. NIST has issued guidance for transition to stronger cryptographic keys, and more robust algorithms by December 2013.

Government systems may begin to encounter certificates signed with SHA–256, and in most cases it is unclear whether the Government systems will continue to function correctly.

Dated: February 24, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–4662 Filed 3–1–11; 8:45 am]

BILLING CODE 6820–EP–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 May 2, 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: February 24, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: Schools and Staffing Survey (SASS 2011/12) Full Scale Data Collection.

OMB Control Number: 1850–0598.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: State, Local, or Tribal Government, State Educational Agenices or Local Educational Agencies.

Total Estimated Number of Annual Responses: 215,553.

Total Estimated Number of Annual Burden Hours: 91,226.

Abstract: The Schools and Staffing Survey (SASS) is an in-depth, nationally-representative survey of first through twelfth grade public and private school teachers, principals, schools, library media centers, and school districts. Kindergarten teachers in schools with at least a first grade are also surveyed. For traditional public school districts, principals, schools, teachers and school libraries, the survey estimates are State-representative. For public charter schools, principals, teachers, and school libraries, the survey estimates are nationally-representative. For private school principals, schools, and teachers, the survey estimates are representative of private school types. There are two additional components within SASS's 4-year data collection cycle: the Teacher Follow-up Survey and the Principal Follow-up Survey, which are conducted a year after the SASS main collection, and the approval for which will be sought at a later date. SASS respondents include public and private school principals, teachers, and school and school district staff. Topics covered include, but are not limited to, demographic characteristics of teachers and principals, school staffing, school programs and services, school library staffing, school library usage, teacher professional development, district policies on teacher recruitment and retention, and teacher certification. This submission for SASS 2011/12 requests Office of Management and Budget approval for full-scale data collection activities to take place during school year 2011–12. These data collection activities include administering the teacher listing form for teacher sampling, and collection of all survey questionnaires for districts, schools, principals, teachers, and school libraries.

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 4528. 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. 2011–4621 Filed 3–1–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) gives notice that, on September 28, 2010, an arbitration panel rendered a decision in the matter of *Calvette Brown* v. *Illinois Department of Human Services, Division of Rehabilitative Services, Case no. R–S/09–3.* This panel was convened by the Department under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the petitioner, Calvette Brown.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5022, Potomac Center Plaza, Washington, DC 20202–2800. *Telephone:* (202) 245–7374. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Calvette Brown (Complainant) alleged violations by the Illinois Department of Human Services, Division of Rehabilitative Services, the State licensing agency (SLA), under the Act and implementing regulations in 34 CFR part 395. Specifically, Complainant alleged that the SLA improperly administered the transfer and promotion policies and procedures of the Illinois Randolph-Sheppard Vending Facility Program in violation of the Act, implementing regulations under the Act, and State rules and regulations in Complainant's bid to manage the vending machine facility at the United States Postal Service facility (USPS facility) on Northwest Highway in Palatine, Illinois.

On January 28, 2009, Complainant participated in an interview process with the SLA concerning the USPS facility. On February 10, 2009, Complainant was selected as the successful bidder and awarded a vending contract at the USPS facility.

On February 20, 2009, another vendor in the selection process filed a grievance with the SLA contesting the Complainant's award of the USPS facility contract. On the same date, the SLA notified Complainant that the implementation of her vending contract at the USPS facility was being suspended pending the outcome of the other vendor's grievance.

On May 14, 2009, the SLA held a state fair hearing for the vendor contesting Complainant's award of the USPS facility. On June 4, 2009, the hearing officer ruled that the January 28, 2009 interview process, in which Complainant participated, was not impartial or objective. Thus, the hearing officer ordered that the January 28, 2009 interview process be invalidated and that another interview process be held.

On June 9, 2009, Complainant filed a grievance with the SLA of the hearing officer's decision in the other vendor's state fair hearing. Complainant participated in the new interview process on July 2, 2009. However, she was not awarded the USPS facility contract.

On July 22, 2009, Complainant filed a grievance with the SLA challenging the SLA's decision to award the contract for the USPS facility to the other vendor after the conclusion of the new interview process. On July 24, 2009, the SLA filed a motion with the hearing officer to dismiss Complainant's grievance. On July 27, 2009, Complainant filed a written objection to the SLA's motion.

On August 12, 2009, a state fair hearing was held on the award of the contract to another vendor. The hearing officer directed both the Complainant and the SLA to submit briefs regarding the SLA's Motion to Dismiss. On September 23, 2009, the hearing officer issued a Memorandum recommending that the SLA's motion be granted, ruling that the Complainant did not have the right to appeal a decision to award a contract to another vendor. However, the hearing officer noted that Complainant had the right to challenge the SLA's decision to terminate her contract at the USPS facility in a separate process under the SLA's administrative rules.

On September 25, 2009, the SLA director issued a decision as final agency action adopting the hearing officer's recommendation and dismissed Complainant's grievance on the grounds that she sought to appeal a non-appealable issue—namely, the final decision in the grievance of another vendor in violation of the SLA's administrative rules. Complainant sought review by a federal arbitration panel of the SLA's final decision. On July 21, 2010, a federal arbitration panel heard this complaint. According to the arbitration panel, the central issue was whether the Illinois Department of Human Services, Division of Rehabilitative Services wrongfully dismissed the attempt by the Complainant to appeal a decision rendered in another blind vendor's state fair hearing.

Arbitration Panel Decision

After hearing testimony and reviewing all of the evidence, the panel ruled to uphold the state fair hearing officer's decision to summarily dismiss the Complainant's appeal of another vendor's state fair hearing decision. Specifically, the panel relied on the Illinois Administrative Code (IAC) Title 89; Social Services, Chapter IV, Department of Human Services, Subchapter a: General Program Provisions, Part 510, Appeals and Hearings Sections 510.20 and 510.l30 which states that a vendor cannot appeal another vendor's decision.

However, the panel noted that the IAC does allow Complainant to file her own grievance in opposition to the other vendor being awarded the USPS facility contract. The panel further denied Complainant's request for costs and attorneys' fees concluding that these expenses were incurred by the Complainant when she pursued the wrong course of action instead of filing her own grievance regarding the decision to award the other vendor the contract for the USPS facility.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

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Dated: February 25, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–4668 Filed 3–1–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice—Computer Matching between the U.S. Department of Education and the Social Security Administration.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, the Computer Matching and Privacy Protections Amendments of 1990, Pub. L. 101–508, and Office of Management and Budget (OMB) guidance on the conduct of computer matching programs, notice is hereby given of the renewal of the computer matching program between the U.S. Department of Education (ED) (recipient agency), and the Social Security Administration (SSA) (source agency). This renewal of the computer matching program between SSA and ED will become effective as explained in this notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, OMB Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, published in the **Federal Register** on June 19, 1989 (54 FR 25818), and OMB Circular No. A–130, Transmittal Memorandum #4, Management of Federal Information Resources (November 28, 2000) we provide the following information:

1. Names of Participating Agencies

The U.S. Department of Education and the Social Security Administration.

2. Purpose of the Match

The purpose of this matching program between ED and SSA is to assist the Secretary of Education with verification of immigration status and Social Security numbers (SSNs) under 20 U.S.C. 1091(g) and (p). SSA will verify the issuance of an SSN to, and will confirm the citizenship status, as recorded in SSA's records, of those students and parents applying for aid under a student financial assistance program authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). Verification of this information by SSA will help ED satisfy its obligation to ensure that individuals applying for financial assistance meet eligibility requirements imposed by the HEA.

Verification by this computer matching program effectuates the purpose of the HEA because it provides an efficient and comprehensive method

of verifying the accuracy of each individual's SSN and claim to a citizenship status that permits that individual to qualify for Title IV, HEA assistance.

3. Authority for Conducting the Matching Program

ED is authorized to participate in the matching program under sections 484(p) (20 U.S.C. 1091(p)); 484(g) (20 U.S.C. 1091(g)); 483(a)(12) (20 U.S.C. 1090(a)(12)); and 428B(f)(2) (20 U.S.C. 1078–2(f)(2)) of the HEA.

SSA is authorized to participate in the matching program under section 1106(a) of the Social Security Act (42 U.S.C. 1306(a)) and the regulations promulgated pursuant to that section (20 CFR part 401).

4. Categories of Records and Individuals Covered by the Match

The Federal Student Aid Application File (18–11–01), which contains the information to determine an applicant's eligibility for Federal student financial assistance, and the ED personal information number (PIN) Registration System of Records (18–11–12), which contains the applicant's information to receive an ED PIN, will be matched against SSA's Master Files of Social Security Number Holders and SSN Applications System, SSA/OS, 60–0058, which maintains records about each individual who has applied for and obtained an SSN.

5. Effective Dates of the Matching Program

This matching program must be approved by the Data Integrity Board of each agency. The computer matching agreement will become effective on the last of the following dates: (1) April 10, 2011; (2) 40 days after the approved agreement and report on the matching program are sent to Congress and OMB (or later if OMB objects to some or all of the agreement) unless OMB waives 10 days of this 40-day period for compelling reasons shown, in which case 30 days after transmission of the report to Congress and OMB; or (3) 30 days after publication of this notice in the **Federal Register**.

The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program, or to obtain additional information about the program, including a copy of the computer matching agreement between ED and SSA, should contact Leroy Everett, Management and Program Analyst, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5454. *Telephone:* (202) 377–3265. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the contact person listed in the preceding paragraph.

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Dated: February 25, 2011.

James W. Runcie,

Deputy Chief Operating Officer, Federal Student Aid, U.S. Department of Education.

[FR Doc. 2011–4669 Filed 3–1–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–290–B]

Application to Export Electric Energy; Ontario Power Generation

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Ontario Power Generation Inc. (OPG) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or requests to intervene must be submitted to DOE and received on or before April 1, 2011.

ADDRESSES: Comments, protests, or requests to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C.824a(e)).

On June 23, 2004 the Department of Energy (DOE) issued Order No. EA–290, which authorized OPG to transmit electric energy from the United States to Canada as a power marketer for a two-year term using existing international transmission facilities. DOE renewed the OPG export authorization on June 21, 2006 in Order No. EA–290–A. Order No. EA–290–A will expire on June 21, 2011. On January 10, 2011, OPG filed an application with DOE for renewal of the export authority contained in Order No. EA–290–A for a five-year term.

The electric energy that OPG proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by OPG have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE and must be received on or before the date listed above.

Comments on the OPG application to export electric energy to Canada should be clearly marked with OE Docket No. 290–B. Additional copies (one each) are to be filed directly with Andrew Barret, VP, Regulatory Affairs and Corporate Strategy, Ontario Power Generation Inc.,

700 University Ave., Toronto, Ontario M5G 1XG *and* Jerry L. Pfeffer, Skadden, Arps, Slate, Meager & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.Hopkins@hq.doe.gov.*

Issued in Washington, DC on February 23, 2011.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–4604 Filed 3–1–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–376]

Application To Export Electric Energy; Societe Generale Energy Corp.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Societe Generale Energy Corp. (SGEC) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before April 1, 2011.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Officer) 202–586–5260 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On February 2, 2011, DOE received an application from the SGEC for authority to transmit electric energy from the United States to Canada as a power marketer for a ten-year term using existing international transmission facilities. The SGEC does not own any electric transmission facilities nor does it hold a franchised service area.

The electric energy that the SGEC proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies and other entities within the United States. The existing international transmission facilities to be utilized by the SGEC have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the SGEC application to export electric energy to Canada should be clearly marked with Docket No. EA–376. Additional copies are to be filed directly with Allison Cyr, MARK Compliance, Societe Generale Corporate & Investment Banking, 1221 Avenue of the Americas, New York, NY 10020 *and* Vincenzo Franco, Van Ness Feldman, P.C., Seventh Floor, Washington, DC 20007. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by emailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on February 23, 2011.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–4645 Filed 3–1–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–297–B]

Application To Export Electric Energy; SESCO Enterprises Canada, LTD

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: SESCO Enterprises Canada, LTD. (SESCO Canada) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or requests to intervene must be submitted to DOE and received on or before April 1, 2011.

ADDRESSES: Comments, protests, or requests to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, *Mail Code:* OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On September 7, 2004 the Department of Energy (DOE) issued Order No. EA–297, which authorized SESCO Canada to transmit electric energy from the United States to Canada as a power marketer for a two-year term using existing international transmission facilities. DOE renewed the SESCO Canada export authorization on May 17, 2006 in Order No. EA–297–A for a five-year term, which will expire on May 17, 2011. On January 24, 2011, SESCO Canada filed an application with DOE for renewal of the export authority

contained in Order No. EA–297–A for a five-year term.

The electric energy that SESCO Canada proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by SESCO Canada have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE and must be received on or before the date listed above.

Comments on the SESCO Canada application to export electric energy to Canada should be clearly marked with OE Docket No. 297–B. Additional copies (one each) are to be filed directly with Michael Schbiger, CEO, SESCO Enterprises Canada, Ltd., 2 Tower Center, Suite 1202, East Brunswick, NJ 08816 and Carol A. Smoots, Esq. and Nidhi J. Thakar, Esq., Perkins Coie, LLP, 700 13th Street, NW., Suite 600, Washington, DC 20005. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.Hopkins@hq.doe.gov.*

Issued in Washington, DC, on February 23, 2011.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–4643 Filed 3–1–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–028]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Daikin AC (Americas), Inc. (Daikin) From the Department of Energy Residential Central Air Conditioner and Heat Pump Test Procedures

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

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) decision and order in Case No. CAC–028. DOE grants a waiver to Daikin from the existing DOE test procedure applicable to residential central air conditioners and heat pumps. The waiver request is specific to the Daikin Altherma air-to-water heat pump with integrated domestic water heating. The test method for central air conditioners and heat pumps contained in Title 10 of the Code of Federal Regulation (10 CFR) part 430, subpart B, appendix M does not include any provisions to account for the operational characteristics of an air-to-water heat pump, or any central air-conditioning heat pump with an integrated domestic hot water component. As a condition of this waiver, Daikin must test and rate its Altherma heat pump products according to the alternate test procedure set forth in this notice.

DATES: This Decision and Order is effective March 2, 2011.

FOR FURTHER INFORMATION CONTACT:

Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 287–6111. *E-mail: mail to: Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. In this decision and order, DOE grants Daikin a waiver from the applicable residential central air conditioner and heat pump test procedures at 10 CFR part 430, subpart B, appendix M. The waiver applies to certain basic models of the Daikin Altherma system, which consists of an air-to-water heat pump that provides hydronic heating and cooling as well as domestic hot water functions. Daikin must test and rate such products using the alternate test procedure described in this notice. Further, today's decision requires that Daikin may not make any representations concerning the energy efficiency of these products unless such product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and such representations fairly disclose the results of such testing. (42 U.S.C. 6314(d)) Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c))

Issued in Washington, DC, on February 23, 2011.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Daikin AC (Americas), Inc. (Daikin) (Case No. CAC–028).

Background

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, including the residential central air conditioners and heat pumps that are the focus of this notice.[1] Part B of Title III includes definitions, test procedures, labeling provisions, energy conservation standards for covered products, and the authority to require information and reports from manufacturers. Further, EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential central air conditioners and heat pumps is contained in 10 CFR part 430, subpart B, appendix M.

DOE's regulations for covered products allow a person to seek a waiver

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

for a particular basic model from the test procedure requirements for covered consumer products, when (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied; if it appears likely that the petition for waiver will be granted; and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On August 27, 2009, Daikin filed a petition for waiver from the test procedures at 10 CFR part 430, subpart B, appendix M, which are applicable to residential central air conditioners and heat pumps, and an application for interim waiver. The Daikin Altherma system consists of an air-to-water heat pump that provides hydronic space heating and cooling as well as domestic hot water functions. It operates either as a split system with the compressor unit outdoors and the hydronic components in an indoors unit, or as a single package configuration in which all system components are combined in a single outdoor unit. In both the single package and the split system configurations, the system can include a domestic hot water supply tank that is located indoors. The DOE test procedure includes provisions for only air-to-air heat pumps, so the Altherma cannot be tested according to the DOE test procedure. Previously, DOE granted Daikin an interim waiver for the Altherma and published its petition for waiver on December 15, 2009. (74 FR 66319) DOE published a **Federal Register** notice granting Daikin's waiver on June 18, 2010. (75 FR 34731) On July 29, 2010, Daikin filed this petition for waiver for the Altherma, which is similar in all respects to the previous Altherma waiver—the only difference is that this petition involves new models with different capacities in the same capacity range. DOE received no comments on this Daikin petition.

Assertions and Determinations

Daikin's Petition for Waiver

The test method for central air conditioners and heat pumps contained in 10 CFR subpart B, appendix M does not include any provisions to account for the operational characteristics of an air-to-water heat pump, or a central air-conditioning heat pump with an integrated domestic hot water component. The applicable DOE test method does not account for the Daikin Altherma system's energy performance because the test method does not accurately evaluate the integrated domestic hot water portion of the system, nor can it evaluate the space-conditioning performance of air-to-water heat pumps. Daikin has proposed using the European standards that are used for testing and rating the Altherma products in Europe. These standards use an energy efficiency ratio (EER) to measure the full load performance of the cooling subsystem; a coefficient of performance (COP) to measure the full load performance of the heating subsystem; and a Seasonal Performance Factor (SPF) to measure the seasonal performance of the combined heating and hot water subsystems. Daikin did not petition to include the performance of the combined cooling and hot water functions in the waiver, nor the stand-alone water heater performance.

The European test procedures are European Standard EN 14511, "Air conditioners, liquid chilling packages and heat pumps with electrically driven compressors for space heating and cooling," and EN 15316, "Heating systems in buildings—Methods for calculation of system energy requirements and system efficiencies." These European Standards use the rating parameters EER and COP. Although these parameters are not well-known to the average consumer, they are the steady-state efficiency parameters of the DOE test procedure in Appendix M, and are well-known to the domestic HVAC industry. This is not true of the combined performance parameter SPF, defined in European test standard EN 15316. SPF is entirely unknown in the U.S., and would be of no value to the U.S. consumer in making purchasing decisions.

There are no domestic test procedures for testing air-to-water heat pumps for space conditioning only, or for integrated space-conditioning and water heater performance. DOE has previously granted waivers to Carrier (55 FR 13607 (April 11, 1990)) and Nordyne (61 FR 11395 (March 20, 1996)) for comparable heat pumps with integrated domestic water heating. DOE granted Daikin an interim waiver and published Daikin's petition for waiver for nearly identical Altherma products on December 15, 2009. (74 FR 66319) DOE granted Daikin's waiver on June 18, 2010. (75 FR 34731) In this current petition, Daikin did not discuss testing or rating the Altherma products as a water heater only; however, we note that in mild weather, when no space heating or cooling is demanded, the Altherma will function as a heat pump water heater. If Daikin wants to characterize the Altherma's performance as a stand-alone water heater, Daikin must test and rate it according to the DOE test procedure in 10 CFR part 430, subpart B, appendix E, or petition for a waiver if the Altherma cannot be so tested.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Daikin Petition for Waiver. The FTC staff did not have any objections to issuing a waiver to Daikin.

Conclusion

After careful consideration of all the materials submitted by Daikin and consultation with the FTC staff, it is ordered that:

(1) Daikin shall not be required to test or rate its Altherma heat pump products on the basis of the currently applicable test procedure under 10 CFR part 430 subpart B, appendix M.

(2) Daikin shall be required to test and rate its Altherma heat pump products according to the alternate test procedure as set forth in paragraph (3) below:

Type	Description	U.S. model name	E.U. equivalent model name
Split Altherma	OD Unit (Split, 1.5–Ton or 6kW)	ERLQ018BAVJU	ERLQ006BAV3
	OD Unit (Split, 2.0–Ton or 7kW)	ERLQ024BAVJU	ERLQ007BAV3
	OD Unit (Split, 2.5–Ton or 8kW)	ERLQ030BAVJU	ERLQ008BAV3
Hydrobox	HB (Heating Only, BUH 3kW)	EKHBH030BA3VJU	EKHBH008BA3V3
	HB (Heating Only, BUH 6kW)	EKHBH030BA6VJU	EKHBH008BA6V3
	HB (Heat Pump, BUH 3kW)	EKHBX030BA3VJU	EKHBX008BA3V3
	HB (Heat Pump, BUH 6kW)	EKHBX030BA6VJU	EKHBX008BA6V3
DHW	Hot Water Tank (50 Gallon or 200L)	EKHWS050BA3VJU	EKHWS200B3V3
	Hot Water Tank (80 Gallon or 300L)	EKHWS080BA3VJU	EKHWS300B3V3
Options	Digital I/O PCB	EKRP1HBAAU	EKRP1HBAA
	Solar Pump Kit	EKSOLHWBAVJU	EKSOLHAV1
	Wired Room Thermostat	EKRTWA	EKRTWA
	Condensate Kit	EKHBDP	EKHBDP

(3) *Alternate Test Procedure*

Daikin shall be required to test the basic models of Altherma products that are explicitly listed above according to:

a. Full Load Performance and Efficiency—The Daikin Altherma shall be tested and rated according to European Standard EN 14511, "Air conditioners, liquid chilling packages and heat pumps with electrically driven compressors for space heating and cooling," except that the test operating and test condition tolerances in Tables 7, 13 and 15 of the DOE test procedure in 10 CFR part 430, subpart B, Appendix M shall apply. Daikin shall rate the Altherma full load heating and cooling performance (not including the DHW contribution) using coefficient of performance (COP) and energy efficiency ratio (EER).

b. The European Standard EN 14511 applies only to testing for COP and EER and does not supersede any DOE requirements in 10 CFR 430.24.

(4) *Representations.* Daikin may make representations about the energy use of its Altherma heat pump products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above, and such representations fairly disclose the results of such testing. Daikin may not make representations of annual operating cost, or any parameters other than COP and EER for the Altherma's space heating and space cooling functions, respectively.

(5) This waiver shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify the waiver at any time if it determines that the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on February 23, 2011.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–4619 Filed 3–1–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CW–017]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Electrolux From the Department of Energy Residential Clothes Washer Test Procedure

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

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CW–017) that grants to Electrolux Home Products (Electrolux) a waiver from the DOE clothes washer test procedure for determining the energy consumption of clothes washers. Under today's decision and order, Electrolux shall be required to test and rate its clothes washers with larger clothes containers using an alternate test procedure that takes the larger capacities into account when measuring energy consumption.

DATES: This Decision and Order is effective March 2, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611, *E-mail: mailto:Michael.Raymond@ee.doe.gov.*

Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 287–6111, *E-mail: mailto:Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Electrolux a waiver from the applicable clothes washer test procedure in 10 CFR part 430, subpart B, appendix J1 for certain basic models of clothes washers with capacities greater than 3.8 cubic feet, provided that Electrolux tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Electrolux from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on February 23, 2011.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Electrolux Home Products (Case No. CW–017).

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–

6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential clothes washers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for automatic and semi-automatic clothes washers is contained in 10 CFR part 430, subpart B, appendix J1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) The petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On December 23, 2010, DOE issued enforcement guidance on the application of recently granted waivers for large-capacity clothes washers and announced steps to improve the waiver process and refrain from certain enforcement actions. This guidance can be found on DOE's Web site at *http://www.gc.energy.gov/1661.htm.*

II. Electrolux's Petition for Waiver: Assertions and Determinations

On December 8, 2010, Electrolux filed a petition for waiver and application for interim waiver from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. In particular, Electrolux requested a waiver to test its residential clothes washers with basket volumes greater than 3.8 cubic feet on the basis of the test procedures contained in 10 CFR part 430, Subpart B, Appendix J1, with a revised Table 5.1 which extends the range of container volumes beyond 3.8 cubic feet. Electrolux's petition and DOE's grant of interim waiver were published in the **Federal Register** on December 27, 2010. 75 FR 81258. DOE received no comments on the Electrolux petition.

Electrolux's petition seeks a waiver from the DOE test procedure because the mass of the test load used in the procedure, which is based on the basket volume of the test unit, is currently not defined for basket sizes greater than 3.8 cubic feet. Electrolux manufactures basic models with capacities greater than 3.8 cubic feet, and it is for these basic models that Electrolux seeks a waiver from DOE's test procedure. In addition, if the current maximum test load mass is used to test these products, the tested energy use would be less than the actual energy usage, and could evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. Electrolux has submitted a revised table to extend the maximum basket volume from 3.8 cubic feet to 6.0 cubic feet, a table similar to one developed by the Association of Home Appliance Manufacturers (AHAM), and provided to DOE in comments on a recently published DOE residential clothes washer test procedure Notice of Proposed Rulemaking (NOPR). 75 FR 57556 (September 21, 2010). When this rulemaking is complete, any amended test procedure will supersede the test procedure described in this waiver. AHAM provided calculations to extrapolate Table 5.1 of the DOE test procedure to larger container volumes. DOE believes that this is a reasonable procedure because the DOE test procedure defines test load sizes as linear functions of the basket volume. AHAM's extrapolation was performed on the load weight in pounds, and AHAM appears to have used the conversion formula of $1/2.2$ (or 0.45454545) to convert pounds to kilograms. In applications for interim waiver and petitions for waiver, LG and Samsung submitted tables similar to the table proposed by AHAM, rounding the results in kilograms to two decimal places, but with a more accurate conversion factor of 0.45359237. However, Samsung and LG's table does contain small rounding errors which were corrected in the table proposed by DOE in the recently published clothes washer test procedure NOPR. Electrolux now requests that DOE approve its use of a table identical to Table 5.1 proposed in DOE's NOPR. *Id.*

As DOE has stated in the past, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Previously, DOE granted a test procedure waiver to Whirlpool for three of Whirlpool's clothes washer models with container capacities greater than 3.8 cubic feet. 75 FR 69653 (November 15, 2010). This notice contained an alternate test procedure, which extended the linear relationship between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 cubic feet. On December 10, 2010, DOE granted a similar waiver to General Electric Company (GE), which used the same alternate test procedure. 75 FR 76968. DOE has also granted interim waivers to Samsung and to LG for similar products. 75 FR 57937 (September 23, 2010); 75 FR 71680 (November 24, 2010). All decisions and orders for this type of product use the Table 5.1 values presented in DOE's NOPR.

III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Electrolux petition for waiver. The FTC staff did not have any objections to granting a waiver to Electrolux.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

IV. Conclusion

After careful consideration of all the material that was submitted by Electrolux, the waivers granted to Whirlpool and GE, and the interim waivers granted to Samsung and LG, the clothes washer test procedure rulemaking, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the Electrolux Corporation (Case No. CW–017) is hereby granted as set forth in the paragraphs below.

(2) Electrolux shall not be required to test or rate the following Electrolux models on the basis of the current test procedure contained in 10 CFR part 430, subpart B, appendix J1. Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

Model	Brand
EIFLS55***	Electrolux
EIFLS60***	Electrolux
EIFLW55***	Electrolux
EWFLS65***	Electrolux
EWFLS70***	Electrolux
EWFLW65H	Electrolux
EWFLW65I	Electrolux
FAFS4272**	Frigidaire
FAFS4473**	Frigidaire
FAFS4474**	Frigidaire
LAFW7000**	Frigidaire
LAFW8000**	Frigidaire
417.4110*	Kenmore
417.4413*	Kenmore

(3) Electrolux shall be required to test the products listed in paragraph (2) above according to the test procedures for clothes washers prescribed by DOE at 10 CFR part 430, appendix J1, except that, for the Electrolux products listed in paragraph (2) only, the expanded Table 5.1 below shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.80	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.00	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.20	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.40	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.60	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.90	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.10	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.30	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.50	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.70	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21

NOTES: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

(4) Representations. Electrolux may make representations about the energy use of its clothes washer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR 430.62.

Issued in Washington, DC, on February 23, 2011.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–4608 Filed 3–1–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Coal Program Package to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by April 1, 2011. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail to *Christine_J._Kymn@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4638. (A copy of your comments should also be provided to EIA's Office of Survey Development and Statistical Integration at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jason Worrall. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*Jason.worrall@eia.gov*) is also recommended. The mailing address is Office of Survey Development and Statistical Integration (EI–21), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0670. Mr. Worrall may be contacted by telephone at (202) 586–6075.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.,* new, revision, extension, or reinstatement); (5) response obligation (*i.e.,* mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; (8) estimate number of respondents; and (9) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–1, 3, 4, 5, 6Q, 7A, 8A and 20, "Coal Program Package."
2. Energy Information Administration.
3. OMB Number 1905–0167.
4. Revision and three-year extension.
5. Mandatory.
6. The coal surveys collect data on coal production, consumption, stocks, prices, imports and exports. Data are published in various EIA publications. Respondents are manufacturing plants, producers of coke, purchasers and distributors of coal, coal mining operators, and coal-consuming electric utilities.
7. Business or other for-profit; State, local or tribal government; Federal government.
8. 3263 responses per year, 1643 respondents.
9. Annual total of 4549.4 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, *see* the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, February 22, 2011.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, Energy Information Administration.

[FR Doc. 2011–4617 Filed 3–1–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed revision and 3-year extension of the surveys in the Natural Gas Data Collection Program Package. The surveys covered by this request include:

- Form EIA–176, "Annual Report of Natural and Supplemental Gas Supply and Disposition"
- EIA–191M, "Monthly Underground Gas Storage Report"
- EIA–191A, "Annual Underground Gas Storage Report"
- EIA–757, "Natural Gas Processing Plant Survey"
- EIA–857, "Monthly Report of Natural Gas Purchases and Deliveries to Consumers"
- EIA–895, "Annual Quantity and Value of Natural Gas Production Report"
- EIA–910M, "Monthly Natural Gas Marketer Survey" and EIA–910A, Annual Natural Gas Marketer Survey"
- EIA–912, "Weekly Underground Natural Gas Storage Report"

DATES: Comments must be filed by May 2, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Ms. Amy Sweeney, Natural Gas Downstream Team, Office of Oil, Gas, and Coal Supply Statistics, Energy Information Administration. To ensure receipt of the comments by the due date, submission by fax (202–586–4420) or e-mail (*amy.sweeney@eia.gov*) is recommended. The mailing address is Ms. Amy Sweeney, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW., EI–24, Washington, DC 20585. Also, Ms. Sweeney may be contacted by telephone at 202–586–2627.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Sweeney at the address listed above. Also, the draft forms and instructions are available on the EIA Web site at *http://www.eia.gov/oil_gas/fwd/proposed.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic statistics. This information is used to assess the adequacy of energy resources to meet both near- and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on the collection of energy information conducted by or in conjunction with the EIA. Any comments help the EIA prepare data requests that maximize the utility of the information collected and assess the impact of collection requirements on the public. As required by section 3507(h)(1) of the Paperwork Reduction Act of 1995, the EIA will later seek approval for this collection by the Office of Management and Budget (OMB).

The natural gas surveys included in the Natural Gas Data Collection Program Package collect information on natural gas production, underground storage, supply, processing, transmission, distribution, consumption by sector, and wellhead and consumer prices. This information is used to support public policy analyses of the natural gas industry and estimates generated from data collected on these surveys. The statistics generated from these surveys are posted to the EIA Web site (*http://www.eia.gov*) in various EIA products, including the Weekly Natural Gas Storage Report (WNGSR), Natural Gas Monthly (NGM), Natural Gas Annual (NGA), Monthly Energy Review (MER), Short-Term Energy Outlook (STEO), Annual Energy Outlook (AEO), and Annual Energy Review (AER). Respondents to EIA natural gas surveys include State agencies, underground storage operators, transporters, marketers, and distributors. Each form included as part of this package is discussed in detail below.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, *see* **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

EIA is requesting a 3-year extension of the collection authority for each of the above-referenced surveys and will make minor changes to the forms and instructions to provide clarity. In addition, EIA proposes the changes outlined below.

Form EIA–176, "*Annual Report of Natural and Supplemental Gas Supply and Disposition*"

In Part 3 of the form, EIA is proposing to collect information on whether respondents, comprised primarily of natural gas utilities and municipal gas systems, have active customer choice programs for certain customer types and their rates of participation in order to gauge the extent to which customer choice programs are being perpetuated and utilized. This data would assist EIA in evaluating whether to reduce spending on monitoring customer choice programs. Also in Part 3 of the form, EIA proposes a question that asks companies to report whether their distribution service territory has changed via sale or merger in order to maintain the accuracy of the survey frame.

Form EIA–191, "*Monthly Underground Gas Storage Report*" *and Form EIA–191A,* "*Annual Natural Gas Storage Report*"

EIA proposes the elimination of Form EIA–191A and the addition of the elements it collects (storage field type, working and total capacity as well as maximum deliverability) to the monthly Form EIA–191. Adding data elements to the monthly Form EIA–191 will provide more timely data on changes in natural gas storage field capacities and will improve the quality of the monthly and related weekly estimates on natural gas storage activity. EIA will protect against the identifiability of reported values for monthly working, base gas levels, total gas in storage, and injections and withdrawals into storage, but will publish storage field name and type, reservoir name, location, capacity and maximum deliverability in company identifiable form. This is consistent with how EIA currently treats the information reported annually on Form EIA–191A. EIA proposes to publicly release the same variables that it currently publicly releases from Form EIA–191A. Information collected in

Parts 1 and 2 on Form EIA–191 will also be considered public information and may be publicly released in company identifiable form

Form EIA–757, "*Natural Gas Processing Plant Survey*"

EIA proposes to continue the collection of the same data elements on Form EIA–757 in its present form but proposes to remove the confidentiality protection for the reported values and to publicly release reported values in company identifiable form in order to meet increasing data user needs for more company level data.

Form EIA–857, "*Monthly Report of Natural Gas Purchases and Deliveries to Consumers*"

In 2010, a new question was added to Form EIA–857 that asked for monthly system sendout by responding companies. The data element was added to Form EIA–857 via a non-substantive change request approved by the Office of Management and Budget. EIA has been using these data to improve the calculation of monthly natural gas consumption so it better aligns with the calendar month. This is more compatible with respondents' reporting records because consumer deliveries are reported according to billing cycles for some of the respondent population. To enhance the precision of monthly natural gas consumption, EIA proposes adding questions that ask companies for their monthly company-use gas as well as any deliveries to the vehicle fuel sector. These items are currently collected on an annual basis on Form EIA–176, *Annual Report of Natural and Supplemental Gas Supply and Disposition,* however, their inclusion on Form EIA–857 will facilitate more accurate consumption estimates on a monthly basis as they are seasonal in nature.

In addition, EIA is proposing to reduce the sample size reporting on Form EIA–857 by approximately 25 percent (400 to 300) by moving to a cutoff-based sample design that can achieve the same level of quality as the current sample design and estimation protocol.

Form EIA–895, "*Annual Quantity and Value of Natural Gas Production Report*"

Because of the difficulties in obtaining portions of the data from some States, EIA is considering discontinuing both the monthly and annual versions of Form EIA–895 and seeks comment on whether the publication of select data elements currently collected on this survey form continues to be relevant and necessary. Specifically, will data user needs be satisfied if data collection on natural gas marketed and dry production, vented and flared gas, gas used for repressuring, consumed on oil and gas leases, as well as wellhead prices, are eliminated and EIA only publishes data on gross production?

Alternatively, if EIA needs to continue publishing data on natural gas wellhead prices, marketed and dry natural gas production, vented and flared gas, and gas used for repressuring or consumed on leases is to continue, EIA is considering the following options or a combination thereof:

(a) Eliminate Form EIA–895 and collect the same data elements (gross production, gas used for repressuring, nonhydrocarbons removed, vented and flared gas, gas used to operate leases and the value of production) using existing EIA surveys of gas producers such as Forms EIA–914, EIA–23, EIA–64A, and EIA–816.

(b) Reduce the scope of Form EIA–895 by collecting only data elements that are available from the States, such as gross withdrawals and their source, and adding data elements on crude oil production and lease condensate to serve as benchmarks for similar data currently collected on existing EIA surveys of natural gas and oil producers.

Form EIA–910M, "*Monthly Natural Gas Marketer Survey*" *and EIA–910A,* "*Annual Natural Gas Marketer Survey*"

EIA proposes to continue Form EIA–910 with no changes to the monthly data collection form and proposes to add an annual version using a new survey, Form EIA–910A, that will ask respondents to report the annual totals of all the existing elements on the monthly survey form. The EIA–910A will be due March 1 of each year and the annual totals it collects will be broken out for each local distribution company's territory in which the respondent operates instead of at the State level, as is reported monthly. Having annual data would assist in the reconciliation of initial estimates of monthly gas sales many respondents submit against actual meter reads which are frequently not available from the utility that delivered the gas by the monthly form's due date. The annual data will also enable EIA to resolve differences between marketer volumes and volumes transported on the account of marketers on Form EIA–176.

Form EIA–176, "*Annual Report of Natural and Supplemental Gas Supply and Disposition,*" and resolve discrepancies between these two surveys.

In addition, EIA proposes to change the data confidentiality protection status of the monthly Form EIA–910M from the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) to protecting the reported information using exemptions under the Freedom of Information Act and provisions in the Trade Secrets Act. The company level data would still be protected and withheld from public release but could be shared for nonstatistical purposes in limited circumstances. The demand for more natural gas data has grown over the past 5 years and EIA has statutory obligations to share energy data with other Federal agencies for informed policy decisions. EIA will continue its policy of not publicly releasing company level information reported on this survey even though EIA is proposing to use different Federal statutes to protect the information. EIA proposes to publish annual data collected on Form EIA–910A in company identifiable form approximately 9 months after the end of the calendar year.

EIA–912, Weekly Underground Natural Gas Storage Report

EIA proposes to continue the collection of the EIA–912 with no changes to the form but expand the sample size from 70 to 85 respondents in order to maintain the same level of survey coverage based on the increase in the number of natural gas storage fields in operation.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in items II and III. The following guidelines are provided to assist in the preparation of comments. Please indicate to which forms your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality,

objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for the surveys included in the Natural Gas Data Collection Program Package is shown below as an average hour(s) per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate are these estimates for the proposed forms?

(1) Form EIA–176, "Annual Report of Natural and Supplemental Gas Supply and Disposition," 12 hours per response.

(2) Form EIA–191, "Monthly Underground Gas Storage Report," 2.6 hours per response.

(3) Form EIA–857, "Monthly Report of Natural Gas Purchases and Deliveries to Consumers," 3.7 hours per response.

(4) Form EIA–895, "Annual Quantity and Value of Natural Gas Production Report," 0.5 hours per response.

(5) Form EIA–910M, "Monthly Natural Gas Marketer Survey," 2 hours per response.

(6) Form EIA–910A, "Annual Natural Gas Marketer Survey," 4 hours per response.

(7) Form EIA–912, "Weekly Underground Natural Gas Storage Report," 0.5 hour per response.

(8) Form EIA–757, "Natural Gas Processing Plant Survey," Schedule A, 0.5 hours per response; Schedule B, 1.5 hours per response.

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, certified at 15 U.S.C. 772(b).

Issued in Washington, DC, February 24, 2011.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, Energy Information Administration.

[FR Doc. 2011–4622 Filed 3–1–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2047–049]

Erie Boulevard Hydropower, LP; Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to increase the installed capacity.

b. *Project No.:* 2047–049.

c. *Date Filed:* January 6, 2011.

d. *Applicant:* Erie Boulevard Hydropower, LP.

e. *Name of Project:* Stewarts Bridge Project.

f. *Location:* The project is located on the Sacandaga River in the Town of Hadley, Saratoga County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Timothy Lukas, Compliance Specialist, Erie Boulevard Hydropower, LP, Hudson River Operations, 399 Big Bay Road, Queensbury, NY 12804; telephone (518) 743–2012.

i. *FERC Contact:* John K. Novak, *telephone:* (202) 502–6067, and *e-mail address: john.novak@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2047–049) on any comments or motions filed.

k. *Description of Request:* Erie Boulevard Hydropower, LP (licensee) proposes to construct a new powerhouse that will house a 2.55 megawatt turbine-generator that will utilize the base flow required by Article 405 of the project license. With the addition of this new unit the installed capacity for the project will increase from 30,000 kilowatts to 32,550 kilowatts while the hydraulic capacity will increase from 4,000 cubic feet per second to 4,325 cubic feet per second. A penstock installed off of the existing penstock will convey flows to the new powerhouse. The proposed new powerhouse would be constructed immediately downstream of the existing powerhouse and near the project tailrace.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the

Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," " TERMS AND CONDITIONS," or "FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *e-Filing:* Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e Filing" link.

Dated: February 23, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4573 Filed 3–1–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0085; FRL–9275–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Protection of Stratospheric Ozone: Critical Use Exemption From the Phaseout of Methyl Bromide (Applications, Recordkeeping, and Periodic Reporting) (Renewal)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, 2031.03, is scheduled to expire on October 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 2, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0085 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* EPA–HQ–OAR–2011–0085, Environmental Protection Agency, *Mailcode:* 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA–HQ–OAR–2011–0085, Air and Radiation Docket at EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0085. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Jeremy Arling, Stratospheric Protection Division, Office of Atmospheric Programs, (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; *telephone* number: (202) 343–9055; *fax number:* (202) 343–2338; *e-mail address:* arling.jeremy@epa.gov. You may also visit the Ozone Depletion website of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2011–0085, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket

in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are producers, importers, distributors, and custom applicators of methyl bromide, organizations, consortia, and associations of methyl bromide users, as well as individual methyl bromide users.

Title: Agency Information Collection Activities; Proposed Collection; Comment Request; Protection of Stratospheric Ozone: Critical Use Exemption from the Phaseout of Methyl Bromide (Applications, Recordkeeping, and Periodic Reporting) (Renewal).

ICR numbers: EPA ICR No. 2031.06, OMB Control No. 2060–0482.

ICR status: EP*A* ICR 2031.03 is currently scheduled to expire on October 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA is seeking to renew EPA ICR 2031.03 which allows EPA to collect CUE applications from regulated entities on an annual basis, and which requires the submission of data from regulated industries to the EPA and requires recordkeeping of key documents to ensure compliance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and the CAA.

Entities applying for this exemption are asked to submit to EPA applications with necessary data to evaluate the need for a critical use exemption. This information collection is conducted to meet U.S. obligations under Article 2H of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The information collection request is required to obtain a benefit under Section 604(d)(6) of the CAA, added by Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277; October 21, 1998).

Since 2002, entities have applied to EPA for a critical use exemption that would allow for the continued production and import of methyl bromide after the phaseout in January 2005. These exemptions are for consumption only in those agricultural sectors that have demonstrated that there are no technically or economically feasible alternatives to methyl bromide. The applications are rigorously assessed and analyzed by EPA staff, including experts from the Office of Pesticide Programs. On an annual basis, EPA uses the data submitted by end users to create a nomination of critical uses which the U.S. Government submits to the Protocol's Ozone Secretariat for review by an international panel of experts and advisory bodies. These advisory bodies include the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The uses authorized internationally by the Parties to the Protocol are made available in the U.S. on an annual basis.

The applications will enable EPA to:

1. Maintain consistency with the Protocol by supporting critical use nominations to the Parties to the Protocol, in accordance with paragraph 2 of Decision IX/6 of the Protocol;
2. Ensure that critical use exemptions comply with Section 604(d)(6);
3. Provide EPA with necessary data to evaluate the technical and economic feasibility of methyl bromide alternatives in the circumstance of the specific use, as presented in an application for a critical use exemption;

The reported data will enable EPA to:

1. Ensure that critical use exemptions comply with Section 604(d)(6);
2. Maintain compliance with the Protocol requirements for annual data submission on the production of ozone depleting substances;
3. Analyze technical use data to ensure that exemptions are used in accordance with requirements included in the annual authorization rulemakings.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as

confidential under 40 CFR Part 2, Subpart b, and will be disclosed only if EPA determines that the information is not entitled to confidential treatment. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203). Individual reporting data may be claimed as sensitive and will be treated as confidential information in accordance with procedures outlined in 40 CFR Part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.3 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.

The annual application, reporting, and recordkeeping burden is as follows: 52 applicants to the critical use exemption program at 1,976 hours per year; 4 producers and importers at a total of 188 hours per year (quarterly reporting); 75 distributors and applicators at 975 hours per year (annual reporting); and 2,000 end users at 575 hours per year (periodic certification of purchases of critical use methyl bromide at the time of each purchase). The total industry burden is therefore 3,714 hours per year.

The annual public application burden for this collection of information is estimated to average 38 hours per response (1,976 hours divided by 52 responses). The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.61 hours per response (1,738 hours divided by 2,846 responses). Overall, the total annual public burden (application, reporting, and recordkeeping) for this collection of information is estimated to average 1.3 hours per response (3,714 hours divided by 2,898 responses).

The total annual labor cost burden associated with information collection request is $843,845. EPA estimates the costs as follows: Application costs totaling $199,299 per year, recordkeeping and reporting costs totaling $582,769 per year, and self certification by producers, importers, distributors, and end users costing $61,777 per year. EPA estimates the capital costs to be $0.

Are there changes in the estimates from the last approval?

There is a decrease of 1,203 hours in the total estimated respondent burden compared with that identified in the EPA ICR 2031.03 which is currently approved by OMB. The reasons for the decrease in burden hours include a decrease in the number of applicants and a similar decline in the number of end users. Furthermore, stakeholders are more familiar with the critical use exemption program and have already organized associations to apply on behalf of multiple growers. Other reasons for burden reduction include the encouragement of electronic submission of applications and other data and frequent EPA communication with methyl bromide stakeholders.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 22, 2011.

Drusilla Hufford,

Director, Stratospheric Protection Division.

[FR Doc. 2011–4638 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0874; FRL–9273–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Safer Detergent Stewardship Initiative (SDSI) Program

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Safer Detergent Stewardship Initiative (SDSI) Program; EPA ICR No. 2261.02, OMB No. 2070–0171. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before April 1, 2011.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2010–0874 to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, *Mail Code:* 7407T, 1200 Pennsylvania Ave., 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: Pamela Myrick, (acting) Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, *Mailcode:* 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–9838; *e-mail address: TSCA–Hotline@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 November 22, 2010 (75 FR 71123), EPA sought comments on this renewal ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA EPA–HQ–OPPT–2010–0874, which is available for online viewing at *http://www.regulations.gov,* or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *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. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Safer Detergent Stewardship Initiative (SDSI) Program.

ICR Status: This is a request to renew an existing approved collection that is scheduled to expire on March 31, 2011. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Safer Detergent Stewardship Initiative is a voluntary program administered by EPA to offer resources and recognition to businesses involved in the transition to safer surfactants. Surfactants are a major ingredient in cleaning products such as detergents, cleaners, airplane de-icers and fire-fighting foams. Safer surfactants are those that break down quickly to non-polluting compounds.

Under SDSI, businesses that have fully transitioned to safer surfactants, or (for non-profits, academic institutions, *etc.*) can document outstanding efforts to encourage the use of safer surfactants, are granted Champion status. At this level, the participant is invited to the SDSI Awards ceremony, listed on the EPA SDSI Web site as a champion, and may use a special logo in their literature to help explain their participation in the program. Businesses that commit to a full and timely transition to safer surfactants, or (for non-profits, academic institutions, *etc.*) can document outstanding efforts to encourage the use of safer surfactants, are granted Partner status. This category provides recognition of significant accomplishments towards the use of safer surfactants. Partners will be listed on the EPA SDSI Web site and may be granted recognition as a Champion in the future if appropriate.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

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**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 hours per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this action are establishments or organizations engaged in formulating, producing, purchasing or distributing surfactants or products containing surfactants.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 1.

Estimated Number of Respondents: 14.

Estimated Total Annual Burden on Respondents: 140 hours.

Estimated Total Annual Costs: $7,770.

Changes in Burden Estimates: This request reflects a decrease of 3,610 hours (from 3,750 hours to 140 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease reflects improved estimates of the number of applications EPA expects to receive, based on actual experience in administering the SDSI program. The Supporting Statement provides details on the change in burden estimate. The change is an adjustment.

Dated: February 24, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–4655 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0568; FRL–9273–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Asbestos-Containing Materials in Schools and Asbestos Model Accreditation Plans

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Asbestos-Containing Materials in Schools and Asbestos Model Accreditation Plans; EPA ICR No. 1365.09, OMB No. 2070–0091. The ICR, which is abstracted below, describes the nature of the information collection activity and its estimated burden and costs.

DATES: Additional comments may be submitted on or before April 1, 2011.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2010–00568 to (1) EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, *Mail Code:* 7407T, 1200 Pennsylvania Ave., 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: Pamela Myrick, (acting) Director,

Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, *Mailcode:* 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–9838; *e-mail address: TSCA–Hotline@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 September 27, 2010 (75 FR 59261), EPA sought comments on this renewal ICR. EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA EPA–HQ–OPPT–2010–0568, which is available for online viewing at *http://www.regulations.gov,* or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *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. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Asbestos-Containing Materials in Schools and Asbestos Model Accreditation Plans.

ICR Status: This is a request to renew an existing approved collection that is scheduled to expire on March 31, 2011. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Asbestos Hazard Emergency Response Act (AHERA) authorizes EPA to promulgate rules appropriate for Local Education Agencies (LEAs) to conduct inspections, develop management plans, and design or conduct response actions with respect to the presence of asbestos-containing materials in school buildings. AHERA also requires states to develop model accreditation plans for persons who perform asbestos inspections, develop management control plans, and design or conduct response actions. This information collection addresses the burden associated with reporting and recordkeeping requirements imposed on LEAs by the asbestos in schools rule, and reporting and recordkeeping requirements imposed on state agencies and training providers related to the model accreditation plan rule.

Responses to the collection of information are mandatory (*see* 40 CFR 763 subpart E). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

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**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between about 5.5 hours and 140 hours per response, depending upon the category of the respondent. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this action are local education agencies (LEAs, *e.g.,* elementary or secondary public school districts or a private school or school system); asbestos training providers to schools and educational systems; and state education departments or commissions or state public health departments or commissions.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 1.

Estimated No. of Respondents: 133,980.

Estimated Total Annual Burden on Respondents: 2,592,888 hours.

Estimated Total Annual Costs: $86,972,753.

Changes in Burden Estimates: This request reflects an increase of 62,288 hours (from 2,530,600 hours to 2,592,888 hours) in the total estimated respondent burden from that currently in the OMB inventory. This increase reflects EPA's estimates of an increased number of LEAs and training providers affected by this information collection. Most of this increase is associated with an increase in the number of schools with nonfriable asbestos-containing materials (ACM). The Supporting Statement provides details on the change in burden estimate. The change is an adjustment.

Dated: February 23, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–4651 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0801; FRL–9273–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Residential Lead-Based Paint Hazard Disclosure Requirements

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Residential Lead-Based Paint Hazard Disclosure Requirements; EPA ICR No. 1710.06, OMB No. 2070–0151. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before April 1, 2011.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2010–0801 to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, *Mail Code:* 7407T, 1200 Pennsylvania Ave., 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: Pamela Myrick, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail code: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–554–1404; *e-mail address: TSCA–Hotline@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 27, 2010 (75 FR 66087), EPA sought comments on this renewal ICR. EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA EPA–HQ–OPPT–2010–0801, which is available for online viewing at *http://www.regulations.gov,* or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *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. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Residential Lead-Based Paint Hazard Disclosure Requirements.

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on March 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d) requires that sellers and lessors of most residential housing built before 1978 disclose known information on the presence of lead-based paint and lead-based paint hazards, and provide an EPA-approved pamphlet to purchasers and renters before selling or leasing the housing. Sellers of pre-1978 housing are also required to provide prospective purchasers with 10 days to conduct an inspection or risk assessment for lead-based paint hazards before obligating purchasers under contracts to purchase the property. The rule does not apply to rental housing that has been found to be free of lead-based paint, zero-bedroom dwellings, housing for the elderly, housing for the handicapped or short-term leases. This information collection addresses the information collection-related requirements related to each affected party as described below.

1. Sellers of pre-1978 residential housing. Sellers of pre-1978 housing must attach certain notification and disclosure language to their sales/leasing contracts. The attachment lists the information disclosed and acknowledges compliance by the seller, purchaser and any agents involved in the transaction.

2. Lessors of pre-1978 residential housing. Lessors of pre-1978 housing must attach notification and disclosure language to their leasing contracts. The attachment, which lists the information disclosed and acknowledges compliance with all elements of the rule, must be signed by the lessor, lessee and any agents acting on their behalf. Agents and lessors must retain the information for three years from the completion of the transaction.

3. Agents acting on behalf of sellers or lessors. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 specifically directs EPA and HUD to require agents acting on behalf of sellers or lessors to ensure compliance with the disclosure regulations.

Responses to the collection of information are mandatory (*see* 40 CFR part 745, Subpart F, and 24 CFR part 35, Subpart H). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

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**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 0.18 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; 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: Entities potentially affected by this action are persons engaged in selling, purchasing or leasing certain residential dwellings built before 1978, or who are real estate agents representing such parties.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: 1.

Estimated No. of Respondents: 39,124,000.

Estimated Total Annual Burden on Respondents: 6,937,330 hours.

Estimated Total Annual Costs: $126,120,374.

Changes in Burden Estimates: This request reflects a decrease of 807,286 hours (from 7,744,616 hours to 6,937,330 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease reflects a reduction in the estimated annual number of real estate sales and residential property rentals involving target housing subject to the rule's requirements and an overall decrease in estimated real estate sales. The Supporting Statement provides details on the change in burden estimate. The change is an adjustment.

Dated: February 23, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–4652 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0143; FRL–8865–1]

Dinotefuran; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture to use the pesticide dinotefuran (CAS No.165252–70–0) to treat up to 150,000 acres of rice to control rice stink bug (Oebalus pugnax). The applicant proposes a use which has been requested in 3 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 17, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0143 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2011–0143. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–9364; *fax number:* (703) 605–0781; *e-mail address: pemberton.libby@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. Environmental justice. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Texas Department of Agriculture (TDA) has requested the Administrator to issue a specific exemption for the use of dinotefuran on rice to control rice stink bug (Oebalus pugnax). Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that the main impact of rice stink bug in this case is not yield loss, but rather quality loss in the harvested rice. Its feeding activity causes grain to develop a pattern of light yellow to black spot, commonly known as "peck" rice. The presence of peck grains lowers the grade (milling quality) and market value of the grain. According to the TDA request, the populations of rice stink bug have been increasing in rice growing areas. Reasons given for this increase include loss of efficacy in the few registered insecticides (lamda-cyhlothrin; methyl parathion; gamma-cyhalothrin; zeta-cypermethrin; and carbaryl) and the increasing prevalence of harvesting a second (ratoon) rice crop in Texas. A second crop allows greater numbers of stink bugs to survive and reproduce than would be possible when only a single crop is harvested. TDA estimates that use of dinotefuran would significantly reduce pest related control costs and rice quality losses, saving the Texas rice industry $1.54 million annually.

The Applicant proposes to make no more than two applications per acre per season applied by air at a rate of 7.5 to 10.5 oz. of product per acre (0.09375 to 0.131 pounds of a.i./acre). A 7-day pre-harvest interval is required. A maximum of 150,000 acres of rice will be treated between June 7 to October 15, 2011.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing a use which has been requested in 3 or more previous years, and a petition for tolerance has not yet been submitted to the Agency.

The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 18, 2011.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–4533 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0179; FRL–8864–7]

Kasugamycin; Receipt of Application for Emergency Exemption for Use on Apples in Michigan, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Michigan Department of Agriculture to use the pesticide kasugamycin (CAS No. 6980–18–3) to treat up to 10,000 acres of apples to control fire blight. The applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comments before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 17, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0179, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility's telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0179. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility's telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Keri Grinstead, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8373; *fax number:* (703) 605–0781; *e-mail address: grinstead.keri@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. Environmental justice. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or state agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist that require the exemption. Michigan Department of Agriculture has requested the Administrator to issue a specific exemption for the use of kasugamycin on apples to control fire blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that kasugamycin is needed to control streptomycin-resistant strains of *Erwinia amylovora,* the causal pathogen of fire blight, due to the lack of available alternatives and effective control practices. Without the use of kasugamycin and if weather conditions are present that favor a fire blight disease epidemic, it is likely that Michigan's apple growers could suffer 50 percent yield losses in 2011.

The Applicant proposes to make no more than three applications of Kasumin 2L on not more than 10,000 acres of apples between April 20 and May 31, 2011, in Berrien, Cass, Grand Traverse, Ionia, Kent, Montcalm, Newaygo, Oceana, Ottawa, and Van Buren counties. As currently proposed, the maximum amount of product to be applied would be 15,000 gallons.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a

notice of receipt of an application for a specific exemption proposing use of a new chemical (*i.e.,* an active ingredient) which has not been registered by EPA. This notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Michigan Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 16, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–4369 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9274–7]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Chartered SAB to consider a draft report commenting on the President's requested FY 2012 budget for EPA research and to discuss SAB plans to provide advice on Office of Research and Development (ORD) strategic research directions.

DATES: The public meeting will be held on Tuesday, March 22, 2011 from 1 p.m. to 5:30 p.m. and Wednesday, March 23, 2011 from 8:30 a.m. to 12 p.m. (Eastern Daylight Time).

ADDRESSES: The meeting will be held at the Umstead Hotel, Cary, North Carolina.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2218, fax (202) 565–2098; or e-mail at *nugent.angela@epa.gov.* General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public meeting to consider a draft report on the President's requested FY 2012 budget for research and to discuss SAB plans to provide advice on ORD strategic research directions. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

As announced in the **Federal Register** (76 FR 7198–7199), an SAB Research Budget Work Group met on March 3–4, 2011 to review the President's requested Fiscal Year 2012 research budget for EPA. The chartered SAB will discuss the work group's draft report and reach agreement on comments to provide the EPA Administrator and the Congress on the adequacy of the President's requested research budget for the next fiscal year in light of EPA's research needs.

Since the last meeting of the chartered SAB on September 22–22, 2010 (75 FR 52940–52941), ORD has restructured its research program into six major program areas: Air, Climate, and Energy; Safe and Sustainable Water Resources; Sustainable and Healthy Communities; Chemical Safety and Sustainability; Human Health Risk Assessment; and Homeland Security. The chartered SAB will receive an update on implementation of these new program areas and initiate discussions with ORD and representatives of ORD's Board of Scientific Councilors about plans to review ORD's new strategic research directions.

Availability of Meeting Materials: A meeting agenda and other materials for the meeting will be placed on the SAB Web site at *http://epa.gov/sab.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the March 22–23, 2011 meeting, interested parties should notify Dr. Angela Nugent, DFO, by e-mail no later than March 15, 2011. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the March 22–23, 2011 meeting should be received in the SAB Staff Office by March 15, 2011, so that the information may be made available to the SAB for its consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide electronic versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Nugent at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 23, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–4639 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0909; FRL–8859–4]

Pesticide Reregistration Performance Measures and Goals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's progress in meeting its performance measures and goals for pesticide reregistration during fiscal years 2009 and 2010. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires EPA to publish information about EPA's annual achievements in this area. This notice discusses the integration of tolerance reassessment with the reregistration process, and describes the status of various regulatory activities associated with reregistration and tolerance reassessment. The notice gives the total numbers of products reregistered and products registered under the "fast-track" provisions of FIFRA.

DATES: This notice is not subject to a formal comment period. Nevertheless, EPA welcomes input from stakeholders and the general public. Written comments, identified by the docket identification (ID) number EPA–HQ–OPP–2009–0909, should be received on or before May 2, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0909, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0909. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Carol P. Stangel, Pesticide Re-evaluation Division (7509P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8007; *e-mail: stangel.carol@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who are interested in the progress and status of EPA's pesticide reregistration and tolerance reassessment programs, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

EPA must establish and publish in the **Federal Register** its annual performance measures and goals for pesticide reregistration, tolerance reassessment, and expedited registration, under section 4(l) of FIFRA, 7 U.S.C. 136a–1(1). Specifically, such measures and goals are to include:

- The status of reregistration.
- The number of products reregistered, canceled, or amended.
- The number and type of data requests of Data Call-In (DCI) notices under FIFRA section 3(c)(2)(B) issued to support product reregistration by active ingredient.
- Progress in reducing the number of unreviewed, required reregistration studies.
- The aggregate status of tolerances reassessed.
- The number of applications for registration submitted under section 4(k)(3) (which provides for expedited processing and review of certain applications) that were approved or disapproved.
- The future schedule for reregistrations in the current and succeeding fiscal year.

• The projected year of completion of the reregistrations under section 4.

FIFRA authorized EPA to conduct a comprehensive pesticide reregistration program—a complete review of the human health and environmental effects of older pesticides originally registered before November 1, 1984. Pesticides meeting today's scientific and regulatory standards could be declared "eligible" for reregistration. To be eligible, an older pesticide must have a substantially complete data base, and must not cause unreasonable adverse effects to human health or the environment when used according to Agency approved label directions and precautions.

In addition, all pesticides with food uses must meet the safety standard of section 408 or the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346a. Under FFDCA, EPA must make a determination that pesticide residues remaining in or on food are "safe"; that is, "that there is reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue" from dietary and other sources. In determining allowable levels of pesticide residues in food, EPA must, among other requirements, perform a comprehensive assessment of each pesticide's risks, considering:

• Aggregate exposure (from food, drinking water, and residential uses).

• Cumulative effects from all pesticides sharing a common mechanism of toxicity.

• Possible increased susceptibility of infants and children.

• Possible endocrine or estrogenic effects.

The 1996 FFDCA amendments also required the reassessment of all existing tolerances (pesticide residue limits in food) and tolerance exemptions within 10 years, to ensure that they met the safety standard of the law. EPA was directed to give priority to the review of those pesticides that appeared to pose the greatest risk to public health. The Agency completed the last of 9,721 required tolerance reassessment decisions in September 2007, ensuring that all pesticides used on food in the United States meet the law's safety standard. EPA's approach to tolerance reassessment under FFDCA was described fully in the Agency's document, "Raw and Processed Food Schedule for Pesticide Tolerance Reassessment" (62 FR 42020, August 4, 1997) (FRL–5734–6).

The Pesticide Registration Improvement Act (PRIA) of 2003 became effective on March 23, 2004 (Pub. L. 108–199, Div. G, Title V, Sec. 501, 118 Stat. 419). Among other things, PRIA amended FIFRA section 4(g)(2) to require EPA to complete Reregistration Eligibility Decisions (REDs) for pesticides with food uses/tolerances by August 3, 2006, and to complete all non-food use REDs by October 3, 2008. The Agency completed decisions for the last of 613 reregistration pesticide cases in September 2008, meeting the PRIA deadline. REDs are available on the Agency's Pesticide Reregistration Status web page, *http://www.epa.gov/pesticides/reregistration/status.htm.*

III. Program Accountability

Through this summary of performance measures and goals for pesticide reregistration, tolerance reassessment, and expedited registration, EPA describes progress made during each of the past 2 years in each of the program areas included in FIFRA section 4(l).

A. Status of Reregistration

EPA had no remaining reregistration eligibility decisions to complete in FY 2009 or FY 2010; the last decisions for 613 reregistration cases were completed in FY 2008.

During FY 2009 and FY 2010, the Agency focused on completing product reregistration decisions.

B. Product Reregistration; Numbers of Products Reregistered, Canceled, and Amended

At the end of the reregistration process, after EPA has issued a RED and declared a pesticide reregistration case eligible for reregistration, individual end-use products that contain pesticide active ingredients included in the case still must be reregistered. This concluding part of the reregistration process is called "product reregistration."

In issuing a completed RED document, EPA sends registrants a Data Call-In (DCI) notice requesting any product-specific data and specific revised labeling needed to complete reregistration for each of the individual pesticide products covered by the RED. Based on the results of EPA's review of these data and labeling, products found to meet FIFRA and FFDCA standards may be reregistered.

A variety of outcomes are possible for pesticide products completing this final phase of the reregistration process. Ideally, in response to the DCI, the pesticide producer, or registrant, will submit the required product-specific data and revised labeling, which EPA will review and find acceptable. At that point, the Agency may reregister the pesticide product. If, however, the product contains multiple active ingredients, the Agency instead would first require the registrant to amend the product's registration, incorporating the labeling changes specified in the RED as interim measures. A product with multiple active ingredients could not be fully reregistered until the last active ingredient in its formulation was eligible for reregistration. In other situations, the Agency may temporarily suspend a product's registration if the registrant has not submitted required product-specific studies within the time frame specified. The Agency may cancel a product's registration because the registrant did not pay the required registration maintenance fee. Alternatively, the registrant may request a voluntary cancellation of their end-use product registration.

1. *Product reregistration actions in FY 2008, FY 2009, and FY 2010.* EPA counts each of the post-RED product outcomes described above as a product reregistration action. A single pesticide product may be the subject of several product reregistration actions within the same year. For example, a product's registration initially may be amended, then the product may be reregistered, or the product may first be suspended and later it may be voluntarily canceled. As a result of 2009 findings by EPA's Office of the Inspector General from the annual FIFRA Financial Statements Audit, EPA's Office of Pesticide Programs has reviewed product reregistration actions completed in FY 2008. Final numbers of FY 2008 product reregistration actions as well as FY 2009 and FY 2010 actions are presented in Table 1.

TABLE 1—PRODUCT REREGISTRATION ACTIONS COMPLETED IN FY 2008, FY 2009, AND FY 2010

[As of September 30, 2010]

Actions	FY 2008	FY 2009	FY 2010
Product reregistration actions	697	603	484
Product amendment actions	205	292	40
Product cancellation actions	309	869	1,188

TABLE 1—PRODUCT REREGISTRATION ACTIONS COMPLETED IN FY 2008, FY 2009, AND FY 2010—Continued

[As of September 30, 2010]

Actions	FY 2008	FY 2009	FY 2010
Product suspension actions	3	5	6
Total actions	1,214	1,769	1,718

2. *Status of the product reregistration universe for FY 2008, FY 2009, and FY 2010.* EPA also keeps track of the status of the universe of products subject to reregistration, that is, the overall number of products reregistered, amended, canceled, and sent for suspension, as well as the number of products with actions pending, as of the end of the fiscal year. This overall status information is not "cumulative"—it is not derived from summing up a series of annual actions. Adding annual actions would result in a larger overall number since each individual product is subject to multiple actions—it can be amended, reregistered, and/or canceled, over time. Instead, the "big picture" status information in Table 2 should be considered a snapshot in time. As registrants and EPA make marketing and regulatory decisions in the future, the status of individual products may change, and numbers in this table are expected to fluctuate.

TABLE 2—STATUS OF THE UNIVERSE OF PRODUCTS SUBJECT TO PRODUCT REREGISTRATION, FOR FY 2008, FY 2009, AND FY 2010

[As of September 30, 2010]

Status	FY 2008	FY 2009	FY 2010
Products reregistered	3,282	3,885	4,369
Products amended	847	1,139	1,179
Products canceled	5,355	6,224	7,412
Products sent for suspension	9	14	20
Total products with actions completed	9,493	11,262	12,980
Products with actions pending	12,746	10,860	9,059
Total products in product reregistration universe	22,239	22,122	22,039

At the end of FY 2010, 9,059 products had product reregistration decisions pending. Some pending products awaited science reviews, label reviews, or reregistration decisions by EPA. Others were not yet ready for product reregistration actions, but were associated with more recently completed REDs. Their product-specific data were not yet due to be submitted to or reviewed by the Agency.

The universe of products in product reregistration has increased in some years and decreased in other years. Generally, an increase resulted from products associated with the most recently completed REDs, while a decrease was due to fluctuations in numbers of products associated with product-specific DCIs (PDCIs).

During FY 2010, EPA refined the number and status of products in the product reregistration universe, and the Agency will use the revised numbers in reporting on the status of the universe starting in FY 2011. By identifying and including products that were canceled between the time when REDs were signed and product-specific DCIs were issued, the Agency has been able to more precisely define the universe of products that are subject to product reregistration. This will enable the Agency to more accurately track the status of products undergoing product reregistration, describe progress in meeting program goals, and carry out plans to complete remaining product reregistration decisions during the next few years.

3. *Product reregistration goal in FY 2011.* EPA's goal is to complete 1,500 product reregistration actions during FY 2011. Additional information is available on EPA's Product Reregistration web page, *http://www.epa.gov/pesticides/reregistration/product-reregistration.htm.*

C. Progress in Reducing the Number of Unreviewed, Required Reregistration Studies

EPA completed the last REDs in 2008, so all necessary studies to make reregistration eligibility decisions for all active ingredients subject to reregistration have been reviewed. Some of the Agency's records, however, still incorrectly depicted a number of reregistration studies as "in review." From August 2008 to August 2010, the Agency conducted an internal examination and clean-up of these records in order to more precisely categorize reregistration studies still depicted as "in review." As shown in Table 3, as a result of this clean-up effort, the Agency succeeded in determining that most reregistration studies (26,019 or more than 94% of the 27,645 studies received) have been reviewed or found to be extraneous. Only 5.9% (1,626) of these studies are still depicted in our data base as "in review." EPA believes the remaining studies to be duplicative, unnecessary, or already reviewed, because the Agency has completed REDs for all pesticides subject to reregistration and no registrant has objected that the Agency failed to consider a submitted study. At this time, the Agency does not plan to spend further resources examining these records.

TABLE 3—REVIEW STATUS OF STUDIES SUBMITTED FOR PESTICIDE REREGISTRATION

[As of July 2010]

Pesticide reregistration list, per FIFRA section 4(c)(2)	Studies reviewed (including cited or extraneous)	Studies still "in review"	Total studies received
List A	12,960 (95%)	714 (5%)	13,674
List B	8,789 (93%)	650 (7%)	9,439
List C	2,800 (97%)	95 (3%)	2,895
List D	1,470 (90%)	167 (10%)	1,637
Total Lists A—D	26,019 (94.1%)	1,626 (5.9%)	27,645 (100%)

D. Applications for Registration Requiring Expedited Processing; Numbers Approved and Disapproved

By law, EPA must expedite its processing of certain types of applications for pesticide product registration, *i.e.,* applications for end-use products that would be identical or substantially similar to a currently registered product (me too products); amendments to current product registrations that do not require review of scientific data; and products for public health pesticide uses. During FY 2009 and FY 2010, EPA considered and approved the numbers of applications for registration requiring expedited processing (also known as "fast track" applications) shown in Table 4.

TABLE 4—FAST TRACK APPLICATIONS APPROVED IN FY 2009 AND 2010

	FY 2009	FY 2010
Me-too product registrations/Fast track	372	260
Amendments/Fast track	2,653	3,391
Total applications processed by fast track means	3,025	3,651

For those applications not approved, the Agency generally notifies the registrant of any deficiencies in the application that need to be corrected or addressed before the application can be approved. Applications may have been withdrawn after discussions with the Agency, but none were formally "denied" during FY 2009 or FY 2010.

On a financial accounting basis, EPA devoted 17.8 full-time equivalents (FTEs) in FY 2009 and 16.6 FTEs in FY 2010 to reviewing and processing applications for fast track me-too product registrations and label amendments. The Agency spent approximately $2.4 million in FY 2009 and $2.35 million in FY 2010 in direct costs (i.e., time on task, not including administrative expenses, computer systems, management overhead, and other indirect costs) on expedited processing and reviews.

F. Projected Year of Completion of Reregistrations

EPA completed the last reregistration eligibility decisions in FY 2008. Product reregistration will not likely be completed before 2014.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 24, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–4649 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–8864–6]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an August 4, 2010 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the August 4, 2010 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective March 2, 2011.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–0123; *fax number:* (703) 308–8090; *e-mail address: tatinclaux.maia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members

of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0014. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the Agency taking?

This notice announces the cancellation, as requested by registrants, of 31 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA registration No.	Product name	Active ingredients
000004–00372	Bonide Pyrenone Garden Dust	Pyperonyl butoxide Pyrethrins
000352–00401	Dupont Oust Herbicide	Sulfometuron
000498–00160	Spraypak Wasp and Hornet Killer Foam	Tetramethrin Phenothrin
000498–00178	Champion Sprayon Roach Spray	Phenothrin
002915–00059	Insecticide	Tetramethrin Phenothrin
003862–00127	Wasp and Hornet Killer	Tetramethrin Phenothrin
008842–00003	Vape Mat	d-Allethrin
008842–00008	Fumakilla Mosquito Coiles	d-Allethrin
009198–00181	Anderson's Starter Fertilizer with Preemergent Weed Control	Siduron
044446–00053	Kill A Bug II Insect Spray	Phenothrin
044446–00066	Aero Roach & Ant Insecticide	Phenothrin
045188–00002	Harrison Flea and Tick Shampoo for Dogs	Piperonyl butoxide Pyrethrins MGK 264
050534–00009	Daconil 2787 Flowable Fungicide	Chlorothalonil
050534–00216	Countdown L&G	Chlorothalonil
053883–00164	Sulfometuron Methyl 75	Sulfometuron
064240–00023	Combat Flying Insect Killer 2	Tetramethrin Phenothrin
066330–00253	40% Insecticidal Soap	Potassium laurate
084456–00002	Max-Aba Imidacloprid Technical	Imidacloprid
084538–00003	Kayari Aromatic Mosquito Coils	d-Allethrin
085678–00001	Glyph Hoho 4S	Glyphosate-isopropylammonium
085678–00006	RedEagle Glyphosate Technical	Glyphosate
085678–00007	Glyphosate 62% Manufacturing Concentrate	Glyphosate-isopropylammonium
CA900010	Volck Supreme Spray	Mineral Oil—includes paraffin oil from 063503
CA910030	Volck Supreme Spray	Mineral Oil—includes paraffin oil from 063503
FL890033	Deamon CC Insecticide	Cypermethrin
KY030003	Dual Magnum Herbicide	S–Metolachlor
KY030004	Dual Magnum Herbicide	S–Metolachlor
OR910028	Fruitone-N	Sodium 1-naphthaleneaceate
TX040007	Fusilade DX Herbicide	Propanoic acid, 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-, butyl ester, R-
WA060003	Subdue Maxx	D–Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-methyl ester
WA070003	Focus SC	Fenarimol

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2 —REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
4	Bonide Products, Inc., Agent Registrations By Design, Inc., P.O. Box 1019, Salem, VA 24153–3805.
352	E. I. Du Pont De Nemours and Co., Inc. (S300/419), 1007 Market Street, Wilmington, DE 19898–0001.
498	Chase Products Co., P.O. Box 70, Maywood, IL 60153.
2915	The Fuller Brush Company, One Fuller Way, Great Bend, KS 67530.
3862	ABC Compounding Co, Inc., P.O. Box 16247, Atlanta, GA 30321.
8842	Fumakilla Ltd., 1330 Dillon Heights Ave, Baltimore, MD 21228–1199.
9198	The Anderson's Lawn Fertilizer Division, Inc., P.O. Box 119, Maumee, OH 43537.
44446	Quest Chemical Company, 12255 F.M., 529 Northwoods Industrial Park, Houston, TX 77041.
45188	Harrison Specialty Co., Inc., 15 University-P.O. Box H, Canton, MA 02021.
50534	GB Biosciences Corporation, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–5458.
53883	Control Solutions, Inc., 427 Hide Away Circle, Cub Run, KY 42729.
64240	Combat Insect Control Systems, 122 C Street, NW., Suite 740, Washington, DC 20001.
66330	Arysta Lifescience North America, LLC, 155401 Weston Parkway, Suite 150, Cary, NC 27513.
84456	Hebei Veyong Bio-Chemical Co., Ltd., Agent Wagner Regulatory Associates, Inc., 4760 Lancaster Pike, Suite 9, P.O. Box 640, Hockessin, DE 19707–0640.
84538	Sathaporn Marketing Company, Ltd., 1330 Dillon Heights Avenue, Baltimore, MD 21228–1199.
85678	RedEagle International LLC, Agent Wagner Regulatory Associates, Inc., 4760 Lancaster Pike, Suite 9, P.O. Box 640, Hockessin, DE 19707–0640.
CA900010; CA910030	Wilbur Ellis Company, P.O. Box 1286, Fresno, CA 93715.
FL890033 KY030003; KY030004; TX040007; WA060003.	Syngenta Crop Protection, Inc., ATTN: Regulatory Affairs, P.O. Box 18300, Greensboro, NC 27419–8300.
OR910028	AMVAC Chemical Corporation, D/B/A AMVAC, 4695 MacArthur Court, Suite 1250, Newport Beach, CA 92660–1706.
WA070003	Gowan Company, P.O. Box 5569, Yuma, AZ 85336–5569.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the August 4, 2010 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are canceled. The effective date of the cancellations that are subject of this notice is March 2, 2011. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of August 4, 2010 (75 FR 46932) (FRL–8837–9). The comment period closed on January 31, 2011.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until [insert date 1 year after publication of the Cancellation Order], which is 1 year after the publication of the Cancellation Order in the **Federal Register** Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 24, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–4656 Filed 3–1–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 10–51; DA 11–317]

Consumer and Governmental Affairs Bureau Seeks Comment on Application of New and Emerging Technologies for Video Relay Service Use

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks comment regarding new and emerging technologies that may be used to access Video Relay Service (VRS). With the proliferation of access to VRS through mobile technologies, the Commission has an interest in gathering information about use of these technologies in compliance with the Commission's rules. Comments received in response to this document

will supplement the comments received in response to the VRS Structure and Practices Notice of Inquiry (VRS Structure and Practices NOI), and will be incorporated into the record of that proceeding.

DATES: Comments are due April 1, 2011. Reply comments are due April 18, 2011.

ADDRESSES: FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. You may submit comments, identified by [CG Docket No. 10–51], by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments and transmit one electronic copy of the filing to each docket number referenced in the caption, which in this case is CG Docket No. 10–51. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

• Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form {your e-mail address}. A sample form and directions will be sent in response.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. In addition, parties must send one copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Washington, DC 20554, or via e-mail to *fcc@bcpiweb.com.* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners.

• Envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane Mason, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–7126 or *Diane.Mason@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Consumer and Governmental Affairs Bureau Seeks Comment on Application of New and Emerging Technologies for Video Relay Service Use,* Public Notice, document DA 11–317, released on February 17, 2011, in CG Docket No. 10–51.

The full text of document DA 11–317 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, *telephone:* (800) 378–3160, fax: (202) 488–5563, or *Internet: http://www.bcpiweb.com.* Document DA 11–317 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

In the *VRS Structure and Practices NOI,* the Commission designated the *ex parte* status of the proceeding as "permit-but-disclose," so any presentations related to document DA 11–317 will also be designated as such. Pursuant to 47 CFR 1.1200 *et. seq.,* this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Synopsis

As part of ongoing VRS reform efforts associated with the *VRS Structure and Practices NOI,* the Bureau seeks additional comment and information regarding new and emerging technologies that may be used to access VRS. *See Structure and Practices of the Video Relay Service Program,* Notice of Inquiry, published at 75 FR 41863, July 19, 2010. In the *VRS Structure and Practices NOI,* the Commission sought comment on how to improve the VRS program "to ensure that it is available to and used by the full spectrum of eligible users, encourages innovation, and is provided efficiently so as to be less susceptible to the waste, fraud, and abuse that plague the current program and threaten its long-term viability." The *NOI* also sought comment on a number of issues concerning the provision of off-the-shelf video equipment, including the extent to which such equipment is available and affordable to VRS consumers, the extent to which this equipment can serve as an acceptable substitute for videophone equipment and software specifically designed for VRS users, and the extent to which changes in the VRS program are needed to allow consumers to use such equipment for VRS calls. Given the recent proliferation of these video technologies, the Bureau now requests that interested parties provide additional information and comment on the specific functionalities of these devices as they relate to the provision and use of VRS as follows:

• What specific features or functions of off-the-shelf equipment, services, and software are needed to effectively use VRS? Commenters should specify whether each feature or function is necessary to use VRS and point-to-point communications or could be optional. What broadband speeds and frames-per-second transmission rates are necessary for acceptable video quality? What lux (lx) level ratings are required for a camera to produce acceptable images in low light settings? What other features must a camera have (*e.g.,* pan, zoom, tilt)? How much jitter (lateral and angular) is tolerable?

• To what extent are consumers currently using off-the-shelf video communication software and/or platforms in connection with VRS? How often do consumers use these technologies (*e.g.,* Skype, Apple FaceTime) as compared to equipment and software issued by VRS providers for point-to-point communications? What are the advantages and

disadvantages of the off-the-shelf technologies compared to technologies provided by VRS-providers? For example, are there specific functionalities—for either VRS or point-to-point communications—that these technologies offer that are not available on devices issued by providers? What are the current limitations of such technologies (*e.g.,* with respect to interoperability, numbering, emergency services) and to what extent do such limitations impede their use by persons who rely on VRS? Do such off-the-shelf technologies comply with the Commission's current rules? If they do not comply, in what ways do they not comply?

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Bureau Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–4646 Filed 3–1–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, March 3, 2011

February 24, 2011.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 3, 2011, in Room TW–C305, at 445 12th Street, SW., Washington, DC.

The Commission will hear Item Nos. 1 thru 3 in a morning session from 10 a.m. to 12 p.m. An afternoon session featuring Item Nos. 4 thru 7 will commence at 2 p.m.

Item No.	Bureau	Subject
1	Media	*Title:* Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures (MB Docket No. 09–52; RM–11528). *Summary:* The Commission will consider an Order to revise rules or establish waiver standards that will make it easier for Native Nations to provide radio service to areas that are the functional equivalent of Tribal Lands and to Tribal Lands that are small or irregularly shaped; and to adjust policies for determining whether proposed new radio stations or station moves constitute an equitable distribution of radio service under Section 307(b) of the Communications Act. A Further Notice seeks comment on adopting a Tribal eligibility requirement or a Tribal bidding credit to foster radio service by Native Nations on their lands.
2	Wireless Telecommunications	*Title:* Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands. *Summary:* The Commission will consider a Notice of Proposed Rulemaking to explore a range of recommendations to help close the wireless gap on Tribal Lands.
3	Consumer & Governmental Affairs	*Title:* Improving Communications Services for Native Nations. *Summary:* The Commission will consider a Notice of Inquiry that explores ways to overcome the barriers to deployment of communications services to Native Nations communities, and to improve consultation and coordination with Native Nations.
	* * *	*Break* * * *.
4	Media	*Title:* Amendment of the Commission's Rules Related to Retransmission Consent (MB Docket No. 10–71). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that seeks comment on changes to rules governing or affecting retransmission consent negotiations between broadcasters and multichannel video programming distributors.
5	Wireline Competition	*Title:* Federal-State Joint Board on Universal Service (CC Docket No. 96–45); Lifeline and Link Up (WC Docket No. 03–109); Lifeline and Link Up Reform and Modernization. *Summary:* The Commission will consider a Notice of Proposed Rulemaking to reform and modernize the universal service Lifeline and Link Up programs by eliminating waste, fraud, and abuse; improving program administration, accountability, and fiscal responsibility; and updating the program in light of market and technology changes, including to support pilot programs for broadband adoption.
6	Wireless Telecommunications and Consumer & Governmental Affairs.	*Title:* Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CG Docket No. 10–213); Amendments to the Commission's rules implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996 (WT Docket No. 96–198) and Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision (CG Docket No. 10–145). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that seeks comment on rules implementing provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The NPRM proposes rules requiring providers of advanced communications services and manufacturers of equipment used for those services to make their products accessible to people with disabilities.
7	Media	*Title:* Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010. *Summary:* The Commission will consider a Notice of Proposed Rulemaking to reinstate the video description rules adopted by the Commission in 2000, as directed in the CVAA.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–4701 Filed 2–28–11; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2011–N–03]

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, Federal Housing Finance Agency.

ACTION: Notice of the Revision and Establishment of Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Office of Inspector General of the Federal Housing Finance Agency (FHFA–OIG) gives notice of the revision of an existing system of records. FHFA–OIG is revising the legacy system of records entitled FHFB–6, "Office of Inspector General Audit and Investigative Records," by dividing it into four separate systems of records: "FHFA–OIG Audit Files Database," "FHFA–OIG Investigative & Evaluative Files Database," "FHFA–OIG Investigative & Evaluative MIS Database," and "FHFA–OIG Hotline Database." These four systems and the routine uses for each are described in detail below.

FHFA–OIG also gives notice of the establishment of an additional Privacy Act system of records, for a total of five FHFA–OIG-specific systems of records. This new system of records is the following: "FHFA–OIG Correspondence Database."

DATES: Comments must be received by *April 1, 2011.* The proposed new systems of records will become effective April 8, 2011, unless comments are received which would result in a contrary determination.

ADDRESSES: Submit comments to FHFA *only once,* identified by "FHFA–OIG SORN," using any one of the following methods:

- *E-mail: Bryan.Saddler@fhfa.gov.* Comments may be sent by e-mail to Bryan Saddler, FHFA–OIG Chief Counsel. Please include "Comments/FHFA–OIG SORN" in the subject line of the message. Comments will be made available for inspection upon written request.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *Bryan.Saddler@fhfa.gov* to ensure timely receipt by the agency. Please include "Comments/FHFA–OIG SORN" in the subject line of the message.
- *Courier/Hand Delivery:* Bryan Saddler, Chief Counsel, Office of Inspector General, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. Log hand delivered packages at the Guard Desk, Fourth Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* Bryan Saddler, Chief Counsel, Office of Inspector General, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

See **SUPPLEMENTARY INFORMATION** for additional information on posting of comments.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Chief Counsel, Office of Inspector General, (202) 408–2577, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

Posting and Public Availability of Comments: All comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov*, and will include any personal information provided.

II. Background

The Federal Housing Finance Regulatory Reform Act of 2008 ("Reform Act"), which was passed as Division A of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law 110–289, 122 Stat. 2654, 2913, abolished both the Federal Housing Finance Board ("FHFB"), an independent agency that oversaw the Federal Home Loan Banks ("FHLBanks"), and the Office of Federal Housing Enterprise Oversight ("OFHEO"), an office within the Department of Housing and Urban Development ("HUD") that oversaw the "safety and soundness" of the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Federal National Mortgage Association ("Fannie Mae"). *See* 12 U.S.C. 1422a, 4502(6), 4511, 4512, 4513, 4541, 4563 (2006); H.R. Rep. No. 110–142, at 95. The Reform Act established in place of the FHFB and OFHEO a new entity, the Federal Housing Finance Agency ("FHFA"), which now regulates and supervises Fannie Mae, Freddie Mac, and the 12 FHLBanks. *See* Reform Act sections 1002, 1101, 1102 and 1311; 12 U.S.C. 4511 (2009).

Section 1105 of HERA also amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and the Inspector General Act of 1978 (the "IG Act"), by specifying that there shall be established an Inspector General within FHFA ("FHFA–OIG"). *See* 12 U.S.C. 4517(d). FHFA–OIG is responsible for, among other things, conducting audits, investigations, and inspections of FHFA's programs and operations; recommending polices that promote economy and efficiency in the administration of FHFA's programs and operations; and preventing and detecting fraud and abuse in FHFA's programs and operations.

By **Federal Register** notice dated October 17, 2006, the FHFB revised an existing system of records to establish a system of records designated FHFB–6,

"Office of Inspector General Audit and Investigative Records." 71 FR 61052 (2006). As noted above, FHFA–OIG plans to amend FHFB–6 to establish the following four systems of records:

FHFA–OIG–1: FHFA–OIG Audit Files Database.

FHFA–OIG–2: FHFA–OIG Investigative & Evaluative Files Database.

FHFA–OIG–3: FHFA–OIG Investigative & Evaluative MIS Database.

FHFA–OIG–4: FHFA–OIG Hotline Database.

FHFA–OIG also plans to establish the following new system of records.

FHFA–OIG–5: FHFA–OIG Correspondence Database.

Sections 552a(e)(4) and (11) of title 5, United States Code, require that an agency publish a notice of the establishment or revision of a record system which affords the public a 30-day period in which to submit comments. To meet this requirement, descriptions of the proposed systems of records follow. Further, a report of FHFA–OIG's intention to establish these systems of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and to the Office of Management and Budget ("OMB"), pursuant to paragraph 4c of Appendix I of OMB Circular A–130, which is entitled "Federal Agency Responsibilities for Maintaining Records About Individuals,"dated February 8, 1996 (February 20, 1996; 61 FR 6427, 6435). The proposed new systems of records described above are set forth in their entirety below.

FHFA–OIG–1

SYSTEM NAME:

FHFA–OIG Audit Files Database.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

This system of records is located on a computer system owned and administered by FHFA. FHFA–OIG may transfer this system of records to a stand-alone, physically secure FHFA–OIG computer system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Auditors, certain administrative support staff, contractors of FHFA–OIG, and certain subjects and/or witnesses referenced in FHFA–OIG's audit activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Audit reports; and (2) working papers, which may include copies of correspondence, evidence, subpoenas, other documents collected and/or generated by the Audit Division during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to 12 U.S.C. 4517(d), 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

This system is maintained in order to act as a management information system for FHFA–OIG audit projects and personnel and to assist in the accurate and timely conduct of audits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by FHFA–OIG or one of its components to provide products or services associated with FHFA–OIG's or component's responsibility arising under the Freedom of Information Act/Privacy Act (FOIA/PA);

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (1) FHFA–OIG suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) FHFA–OIG has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA–OIG or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FHFA–OIG's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to an FHFA–OIG audit, evaluation, or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical

injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of FHFA–OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name of the auditor, support staff, contractors, or subject of the audit.

SAFEGUARDS:

The records are accessible to FHFA–OIG personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with approved retention schedules, including: (1) Audit Reports File (N1–485–08–2, item 17), which provides for annual cut-off and for destruction 10 years after cut-off; and (2) Audit Workpapers (N1–485–08–2, item 2), which provides for annual cut-off and for destruction 6 years and 3 months after cut-off. Additional approved schedules may apply. Destruction of records shall occur in the manner(s) appropriate to the type of record, such as shredding of paper records and/or deletion of computer records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of Inspector General, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 12 CFR 1202.5. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). FHFA is in the process of publishing an updated Privacy Act regulation at 12 CFR part 1204 that will implement (j)(2) and (k)(2) exemptions to cover FHFA–OIG records. Upon publication of this revised Privacy Act Regulation, these exemptions are hereby incorporated by reference and are an integral part of this SORN.

FHFA–OIG–2

SYSTEM NAME:

FHFA–OIG Investigative & Evaluative Files Database.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

This system of records will be maintained on a stand-alone, physically secure FHFA–OIG computer system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects or potential subjects of investigative or evaluative activities; witnesses involved in investigative or evaluative activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, police reports, and other exhibits and documents collected during an investigation; (2) status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) complaints or requests to investigate; (4) subpoenas and evidence obtained in response to a subpoena; (5) evidence logs; (6) pen registers; (7) correspondence; (8) records of seized money and/or property; (9) reports of laboratory examination, photographs, and evidentiary reports; (10) digital image files of physical evidence; (11) documents generated for purposes of FHFA–OIG's undercover activities; (12) documents pertaining to the identity of confidential informants; and, (13) other documents collected and/or generated by the Investigations Division and/or the Evaluations Division during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to 12 U.S.C. 4517(d), 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by FHFA–OIG and collected as part of investigations conducted by FHFA–OIG's Investigations Division and/or evaluations conducted by FHFA–OIG's Evaluations Division.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by FHFA–OIG or one of its components to provide products or services associated with FHFA–OIG's or component's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (1) FHFA–OIG suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) FHFA–OIG has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA–OIG or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FHFA–OIG's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to an FHFA–OIG audit, evaluation, or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of FHFA–OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, and/or case number.

SAFEGUARDS:

The records are accessible to FHFA–OIG personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with approved retention schedules, including: (1) Chronological File (N1–485–08–2, Item 5), which provides for annual cut-off and for destruction 5 years after cut-off; (2) Inspector General Community Operational Guidance (N1–485–08–2, Item 16), which provides for annual cut-off and for destruction 3 years after cut-off; (3) Grand Jury (6e) Files (N1–485–08–2, Item 14), which provides for cut-off when case is closed, then retention in a segregated, locked file for 20 years thereafter; (4) Investigation Case Files (N1–485–94–1, Item 3.8), which provides for cutting off inactive files at the end of the fiscal year, and for destruction 10 years after cut-off; (5) Non-FHFA Offices' Correspondence (GRS 23, item 1), which permits destruction after 2 years; and (6) FHFA Offices' Correspondence (N1–485–94–1, Item 3.6), which provides for annual cut-off, and for destruction when no longer needed. Additional approved schedules may apply. Destruction of records shall occur in the manner(s) appropriate to the type of record, such as shredding of paper records and/or deletion of computer records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of Inspector General, Federal Housing Finance Agency, 1625 Eye Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 12 CFR 1202.5. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). FHFA

is in the process of publishing an updated Privacy Act regulation at 12 CFR Part 1204 that will implement (j)(2) and (k)(2) exemptions to cover FHFA–OIG records. Upon publication of this revised Privacy Act Regulation, these exemptions are hereby incorporated by reference and are an integral part of this SORN.

FHFA–OIG–3

SYSTEM NAME:

FHFA–OIG Investigative & Evaluative MIS Database.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

This system of records will be maintained on a stand-alone, physically secure FHFA–OIG computer system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects or potential subjects of investigative or evaluative activities; witnesses involved in investigative or evaluative activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, police reports, and other exhibits and documents collected during an investigation; (2) status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) complaints or requests to investigate; (4) subpoenas and evidence obtained in response to a subpoena; (5) evidence logs; (6) pen registers; (7) correspondence; (8) records of seized money and/or property; (9) reports of laboratory examination, photographs, and evidentiary reports; (10) digital image files of physical evidence; (11) documents generated for purposes of FHFA–OIG's undercover activities; (12) documents pertaining to the identity of confidential informants; and, (13) other documents collected and/or generated by the InvestigationsDivision and/or the Evaluations Division during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to 12 U.S.C.4517(d), 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by FHFA–OIG and collected as part of investigations conducted by FHFA–OIG's Investigations Division and/or evaluations conducted by FHFA–OIG's Evaluations Division.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by FHFA–OIG or one of its components to provide products or services associated with FHFA–OIG's or component's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (1) FHFA–OIG suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) FHFA–OIG has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA–OIG or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FHFA–OIG's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to an FHFA–OIG audit, evaluation, or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of FHFA–OIG to ensure adequate internal safeguards and management procedures exist within any office that had received

law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, and/or case number.

SAFEGUARDS:

The records are accessible to FHFA–OIG personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with approved retention schedules, including: (1) Chronological File (N1–485–08–2, Item 5), which provides for annual cut-off and for destruction 5 years after cut-off; (2) Inspector General Community Operational Guidance (N1–485–08–2, Item 16), which provides for annual cut-off and for destruction 3 years after cut-off; (3) Grand Jury (6e) Files (N1–485–08–2, Item 14), which provides for cut-off when case is closed, then retention in a segregated, locked file for 20 years thereafter; (4) Investigation Case Files (N1–485–94–1, Item 3.8), which provides for cutting off inactive files at the end of the fiscal year, and for destruction 10 years after cut-off; (5) Non-FHFA Offices' Correspondence (GRS 23, item 1), which permits destruction after 2 years; and (6) FHFA Offices' Correspondence (N1–485–94–1, Item 3.6), which provides for annual cut-off, and for destruction when no longer needed. Additional approved schedules may apply. Destruction of records shall occur in the manner(s) appropriate to the type of record, such as shredding of paper records and/or deletion of computer records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of Inspector General, Federal Housing Finance Agency, 1625 Eye Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 12 CFR 1202.5. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). FHFA is in the process of publishing an updated Privacy Act regulation at 12 CFR Part 1204 that will implement (j)(2) and (k)(2) exemptions to cover FHFA–OIG records. Upon publication of this revised Privacy Act Regulation, these exemptions are hereby incorporated by reference and are an integral part of this SORN.

FHFA–OIG–4

SYSTEM NAME:

FHFA–OIG Hotline Database.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

This system of records will be maintained on a stand-alone, physically secure FHFA–OIG computer system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Complainants who contact the FHFA–OIG Hotline.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received from Hotline complainants; (2) records created of verbal communications with Hotline complainants; and (3) records used to process Hotline complaints, including information included in FHFA–OIG's other systems of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to 12 U.S.C. 4517(d), 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

This system consists of complaints received by FHFA–OIG from individuals and their representatives, oversight committees, and others who conduct business with FHFA–OIG, and information concerning efforts to resolve these complaints; it serves as a record of the complaints and the steps taken to resolve them.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of

Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by FHFA–OIG or one of its components to provide products or services associated with FHFA–OIG's or component's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (1) FHFA–OIG suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) FHFA–OIG has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA–OIG or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FHFA–OIG's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to an FHFA–OIG audit, evaluation, or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of FHFA–OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name of the correspondent and/or name of the individual to whom the record applies.

SAFEGUARDS:

The records are accessible to FHFA–OIG personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with approved retention schedules, including: (1) Chronological File (N1–485–08–2, Item 5), which provides for annual cut-off and for destruction 5 years after cut-off; (2) Inspector General Community Operational Guidance (N1–485–08–2, Item 16), which provides for annual cut-off and for destruction 3 years after cut-off; (3) Non-FHFA Offices' Correspondence (GRS 23, item 1), which permits destruction after 2 years; and (4) FHFA Offices' Correspondence (N1–485–94–1, Item 3.6), which provides for annual cut-off, and for destruction when no longer needed. Additional approved schedules may apply. Destruction of records shall occur in the manner(s) appropriate to the type of record, such as shredding of paper records and/or deletion of computer records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of Inspector General, Federal Housing Finance Agency, 1625 Eye Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 12 CFR 1202.5. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). FHFA is in the process of publishing an updated Privacy Act regulation at 12 CFR Part 1204 that will implement (j)(2) and (k)(2) exemptions to cover FHFA–OIG records. Upon publication of this revised Privacy Act Regulation, these exemptions are hereby incorporated by reference and are an integral part of this SORN.

FHFA–OIG–5

SYSTEM NAME:

FHFA–OIG Correspondence Database.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

This system of records will be maintained on a stand-alone, physically secure FHFA–OIG computer system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Correspondents; and (2) persons upon whose behalf correspondence was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received by FHFA–OIG and responses generated thereto; and (2) records used to respond to incoming correspondence, including information included in FHFA–OIG's other systems of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to12 U.S.C. 4517(d), 5 U.S.C. App. 3, and 5 U.S.C. 301.

PURPOSE(S):

This system consists of correspondence received by FHFA–OIG from individuals and their representatives, oversight committees, and others who conduct business with FHFA–OIG and the responses thereto; it serves as a record of in-coming correspondence and the steps taken to respond thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) Disclose information to the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by FHFA–OIG or one of its components to provide products or services associated with FHFA–OIG's or component's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections;

(9) Disclose information to appropriate agencies, entities, and persons when (1) FHFA–OIG suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) FHFA–OIG has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA–OIG or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FHFA–OIG's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(10) Disclose information to any source, either private or governmental, to the extent necessary to elicit information relevant to an FHFA–OIG audit, evaluation, or investigation;

(11) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(12) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(13) Disclose information to persons engaged in conducting and reviewing internal and external peer reviews of FHFA–OIG to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name of the correspondent and/or name of the individual to whom the record applies.

SAFEGUARDS:

The records are accessible to FHFA–OIG personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with approved retention schedules, including: (1) Chronological File (N1–485–08–2, Item 5), which provides for annual cut-off and for destruction 5 years after cut-off; (2) Non-FHFA Offices' Correspondence (GRS 23, item 1), which permits destruction after 2 years; (3) FHFA Offices' Correspondence (N1–485–94–1, Item 3.6), which provides for annual cut-off, and for destruction when no longer needed; and (4) Freedom of Information Act Request Files (GRS 14, Item 11a(1)): If access is granted to all requested records, destroy 2 years after reply; if access is denied for technical reasons (failure to pay fee, nonexistent records, *etc.*), destroy 2 years after reply; if access is denied on substantive

grounds at least in part but no appeal, destroy 6 years after reply; if denial is appealed, destroy in accordance with GRS 14, Item 12 for FOIA Request Appeals. Additional approved schedules may apply. Destruction of records shall occur in the manner(s) appropriate to the type of record, such as shredding of paper records and/or deletion of computer records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Office of Inspector General, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 12 CFR 1202.5. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). FHFA is in the process of publishing an updated Privacy Act regulation at 12 CFR part 1204 that will implement (j)(2) and (k)(2) exemptions to cover FHFA–OIG records. Upon publication of this revised Privacy Act Regulation, these exemptions are hereby incorporated by reference and are an integral part of this SORN.

Dated: February 15, 2011.

Steven A. Linick,

Inspector General.

[FR Doc. 2011–4624 Filed 3–1–11; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are 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.: 011346–022.

Title: Israel Carrier Association.

Parties: A.P. Moller-Maersk A/S; American President Lines, Ltd.; Maersk Line Limited; and Zim Integrated Shipping Services, Ltd.

Filing Party: Howard A. Levy, Esq.; Chairman; Israel Trade Conference; 80 Wall Street, Suite 1117; New York, NY 10005–3602.

Synopsis: The amendment changes the authority of the Agreement from a conference to a service contract with Israel's Ministry of Defense, changes the Agreement's name from Israel Trade Conference Agreement, and restates the entire Agreement.

Agreement No.: 011679–012.

Title: ASF/SERC Agreement.

Parties: American President Lines, Ltd./APL Co. Pte Ltd.; ANL Singapore Pte Ltd.; China Shipping (Group) Company/China Shipping Container Lines, Co. Ltd.; COSCO Container Lines Company, Ltd.; Evergreen Line Joint Service; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Ltd.; Wan Hai Lines Ltd.; and Yang Ming Marine Transport Corp.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment updates the corporate addresses of American President Lines Ltd. and APL Co Pte. Ltd.

Agreement No.: 012036–002.

Title: Maersk Line/MSC TP5 Space Charter Agreement.

Parties: A.P. Moeller-Maersk A/S and Mediterranean Shipping Company S.A.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment deletes the People's Republic of China from the geographic scope of the agreement, revises the amount of space to be chartered, deletes obsolete reference to sub-chartering, and revises the duration of the Agreement.

Agreement No.: 012046–001.

Title: MSC/Hapag-Lloyd Space Charter Agreement.

Parties: Hapag-Lloyd AG; and Mediterranean Shipping Co. S.A. ("MSC").

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment deletes the U.S. Gulf Coast, Mexico, and Venezuela from the geographic scope of the agreement and revises the amount of space to be chartered.

Agreement No.: 012106–001.

Title: HLAG/HSDG Trans-Atlantic Space Charter Agreement.

Parties: Hamburg Sud and Hapag-Lloyd AG.

Filing Parties: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment adds Hamburg, Germany to the scope of the Agreement and revises the amount of space to be chartered.

Agreement No.: 012107–001.

Title: HLAG/HMM Trans-Atlantic Space Charter Agreement.

Parties: Hapag-Lloyd AG and Hyundai Merchant Marine Co., Ltd.

Filing Parties: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement would add Hamburg, Germany to the scope of the agreement and revise the amount of space to be chartered.

Agreement No.: 012119.

Title: Maersk Line/CMA CGM TP5 Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S and CMA CGM S.A.

Filing Parties: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes Maersk Line to charter space to CMA CGM on its TP5 service in the trade between U.S. Pacific Coast ports and ports in Japan and South Korea.

Agreement No.: 012120.

Title: CSAV/Liberty Turkey Space Charter Agreement.

Parties: Compana Sud Americana de Vapores S.A. and Liberty Global Logistics LLC.

Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.

Synopsis: The agreement authorizes CSAV to charter space from Liberty for the carriage of motorized vehicles via direct service or transshipment from ports in Turkey to ports in the U.S. Atlantic and Gulf Coast.

By Order of the Federal Maritime Commission.

Dated: February 25, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–4666 Filed 3–1–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed —Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision of the following reports:

1. Report title: Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP.

OMB control number: 7100–0128.

Effective Date: March 31, 2011.

Frequency: Quarterly.

Reporters: Bank holding companies.

Estimated annual reporting hours: FR Y–9C: 188,820; FR Y–9LP: 27,195.

Estimated average hours per response: FR Y–9C: 45.0; FR Y–9LP: 5.25.

Number of respondents: FR Y–9C: 1,049; FR Y–9LP: 1,295.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (b)(6)).

Abstract: The FR Y–9C and the FR Y–9LP are standardized financial statements for the consolidated bank holding company (BHC) and its parent. The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on-site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from BHCs. The FR Y–9C is filed by top-tier BHCs with total consolidated assets of $500 million or more. (Under certain circumstances defined in the General Instructions, BHCs under $500 million may be required to file the FR Y–9C).

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHCs, a separate FR Y–9LP must be filed for each lower tier BHC.

Current Actions: On November 3, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 67721) requesting public comment for 60 days on the extension, with revision, of the Financial Statements for Bank Holding Companies. The comment period expired on January 3, 2011. The Federal Reserve received two comment letters from bankers' organizations on proposed revisions to the FR Y–9C and FR Y–9LP. In addition, the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (the banking agencies) received nine comment letters on proposed revisions to the Call Reports, which parallel proposed revisions to the FR Y–9C, from three banks, three bankers' organizations, two bank insurance consultants, and an insurance company.

No comments were received on the following revisions that were proposed to take effect as of March 31, 2011, and therefore the Federal Reserve will implement these revisions as proposed: (1) The break out of commercial mortgage-backed securities issued or guaranteed by U.S. Government agencies and sponsored agencies, (2) the break out of loans and other real estate owned (OREO) information covered by FDIC loss-sharing agreements by loan and OREO category, (3) the addition of new data items for the total assets of captive insurance and reinsurance subsidiaries, (4) the addition of new income statement items for credit valuation adjustments and debit valuation adjustments included in trading revenues (for BHCs with total assets of $100 billion or more), (5) the revision of reporting instructions for construction lending, and (6) the collection of expanded information on the quarterly-averages schedule.

The following section of this notice describes the remaining proposed FR Y–9C and FR Y–9LP report changes and discusses the Federal Reserve's evaluation of the comments received on the proposed changes. After considering the comments, the Federal Reserve will move forward in 2011 with the proposed reporting changes after making certain modifications in response to the comments.

The Federal Reserve recognizes institutions' need for lead time to prepare for reporting changes. Thus, consistent with longstanding practice, for the March 31, 2011, report date, BHCs may provide reasonable estimates for any new or revised FR Y–9C data item initially required to be reported as of that date for which the requested information is not readily available. Furthermore, the specific wording of the captions for the new or revised FR Y–9C data items discussed in this notice and the numbering of these data items should be regarded as preliminary.

Revisions—FR Y–9C

Revisions Related to Call Report Revisions

The Federal Reserve proposed to make the following revisions to the FR Y–9C to parallel proposed changes to the Call Report. BHCs have commented that changes should be made to the FR Y–9C in a manner consistent with

changes to the Call Report to reduce reporting burden.

1. Troubled Debt Restructurings

The Federal Reserve proposed that BHCs report additional detail on loans that have undergone troubled debt restructurings in Schedule HC–C, Loans and Lease Financing Receivables, and Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets. More specifically, Schedule HC–C, Memorandum item 1.b, Other loans and all leases, restructured and in compliance with modified terms, and Schedule HC–N, Memorandum item 1.b, restructured, Other loans and all leases, included in Schedule HC–N, would be broken out to provide information on restructured troubled loans for many of the loan categories reported in the bodies of Schedule HC–C and Schedule HC–N. The breakout would also include Loans to individuals for household, family, and other personal expenditures, whose terms have been modified in troubled debt restructurings, which are currently excluded from the reporting of troubled debt restructurings.

In the aggregate, troubled debt restructurings for all FR Y–9C respondents have grown from $11.4 billion at year-end 2007 to $106.2 billion as of March 31, 2010. The proposed additional detail on troubled debt restructurings in Schedules HC–C and HC–N would enable the Federal Reserve to better understand the level of restructuring activity at BHCs, the categories of loans involved in this activity, and whether BHCs are working with their borrowers to modify and restructure loans. In particular, to encourage banking organizations to work constructively with their commercial borrowers, the banking agencies recently [1] issued guidance on commercial real estate loan workouts and small business lending. While this guidance has explained the agencies' expectations for prudent workouts, the Federal Reserve and the industry would benefit from additional reliable data outside of the examination process to assess restructuring activity at BHCs for commercial real estate loans and commercial and industrial loans. Further, it is important to separately identify commercial real estate loan restructurings from commercial and industrial loan restructurings given that the value of the real estate collateral is a consideration in a BHC's decision to modify the terms of a commercial real estate loan in a troubled debt restructuring, but such collateral protection would normally be absent from commercial and industrial loans for which a loan modification is being explored because of borrowers' financial difficulties.

It is also anticipated that other loan categories will experience continued workout activity in the coming months given that most asset classes have been adversely affected by the recent recession. This effect is evidenced by the increase in past due and nonaccrual assets across virtually all asset classes over the past two to three years.

Currently, BHCs report loans and leases restructured and in compliance with their modified terms (Schedule HC–C, Memorandum item 1) with separate disclosure of (a) loans secured by 1–4 family residential properties (in domestic offices) and (b) other loans and all leases (excluding loans to individuals for household, family, and other personal expenditures). This same breakout is reflected in Schedule HC–N, Memorandum item 1, for past due and nonaccrual restructured troubled loans. The broad category of other loans in Schedule HC–C, Memorandum item 1.b, and Schedule HC–N, Memorandum item 1.b, does not permit an adequate analysis of troubled debt restructurings. In addition, the disclosure requirements for troubled debt restructurings under generally accepted accounting principles (GAAP) do not exempt restructurings of loans to individuals for household, family, and other personal expenditures. Therefore, if more detail were to be added to match the reporting of loans in Schedule HC–C and Schedule HC–N, the new data would provide the Federal Reserve with the level of information necessary to assess BHCs' troubled debt restructurings to the same extent that other loan quality and performance indicators can be assessed. However, the Federal Reserve notes that, under GAAP, troubled debt restructurings do not include changes in lease agreements [2] and therefore propose to exclude leases from Schedule HC–C, Memorandum item 1, and from Schedule HC–N, Memorandum item 1, and strike the phrase "and all other leases" from the caption of these data items.

Thus, the proposed breakdowns of existing Memorandum item 1.b in both Schedule HC–C and Schedule HC–N would create new Memorandum items in both schedules covering troubled debt restructurings of 1–4 family residential construction loans, Other construction loans and all land development and other land loans, Loans secured by multifamily (5 or more) residential properties, Loans secured by owner-occupied nonfarm nonresidential properties, Loans secured by other nonfarm nonresidential properties, Commercial and industrial loans, and All other loans and all leases (including loans to individuals for household, family, and other personal expenditures).[3] If restructured loans in any category of loans, as defined in Schedule HC–C, included in restructured, All other loans, exceeds 10 percent of the amount of restructured, All other loans, the amount of restructured loans in this category or categories would be itemized and described.

Finally, Schedule HC–C, Memorandum item 1, and Schedule HC–N, Memorandum item 1, are intended to capture data on loans that have undergone troubled debt restructurings as that term is defined in GAAP. However, the captions of these two Memorandum items include only the term "restructured" rather than explicitly mentioning troubled debt restructurings, which has led to questions about the scope of these Memorandum items. Accordingly, the Federal Reserve proposed to revise the captions so that they clearly indicate that the loans to be reported in Schedule HC–C, Memorandum item 1, and Schedule HC–N, Memorandum item 1, are troubled debt restructurings.

The banking agencies received comments from three bankers' associations on the proposed additional detail in the Call Report on loans that have undergone troubled debt restructurings, comparable to the proposed changes to the FR Y–9C described above. Two of the commenters recommended the banking agencies defer the proposed troubled debt restructuring revisions, including the new breakdowns by loan category, until the Financial Accounting Standards Board (FASB) finalizes proposed clarifications to the accounting for troubled debt restructurings by creditors.[4] In addition, two of the bankers' associations recommended retaining the term "restructured" in the caption titles

[1] Interagency Statement on Meeting the Credit Needs of Creditworthy Small Business Borrowers, issued February 12, 2010, and Policy Statement on Prudent Commercial Real Estate Loan Workouts, issued October 30, 2009.

[2] Accounting Standards Codification paragraph 470–60–15–11.

[3] For BHCs with foreign offices, the Memorandum items for restructured real estate loans would cover such loans in domestic offices. In addition, BHCs would also provide a breakdown of restructured commercial and industrial loans between U.S. and non-U.S. addressees.

[4] FASB Proposed Accounting Standards Update (ASU): Receivables (Topic 310), Clarifications to Accounting for Troubled Debt Restructurings by Creditors.

instead of changing to the term "troubled debt restructurings," stating that changing this term would result in the collection of only a subset of total restructurings and would misrepresent banks' efforts to work with their customers.

As noted above, BHCs currently report loans and leases restructured and in compliance with their modified terms in Schedule HC–C, Memorandum item 1, and report past due and nonaccrual restructured loans in Schedule HC–N, Memorandum item 1. Although the captions for these line items do not use the term "troubled debt restructurings," the line item instructions generally characterize loans reported in these items as troubled debt restructurings and direct the reader to the Glossary entry for "troubled debt restructurings" for further information. Furthermore, the Glossary entry states that "all loans that have undergone troubled debt restructurings and that are in compliance with their modified terms must be reported as restructured loans in Schedule HC–C, Memorandum item 1." Therefore, the Federal Reserve's longstanding intent has been to collect information on troubled debt restructurings in these line items, and these items were not designed to include loan modifications and restructurings that do not constitute troubled debt restructurings (e.g., where a BHC grants a concession to a borrower who is not experiencing financial difficulties).

The accounting standards for troubled debt restructurings are set forth in Accounting Standards Codification (ASC) Subtopic 310–40, Receivables—Troubled Debt Restructurings by Creditors (formerly FASB Statement No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings," as amended by FASB Statement No. 114, "Accounting by Creditors for Impairment of a Loan"). This is the accounting basis for the current reporting of restructured troubled loans in existing Schedule HC–C, Memorandum item 1, and Schedule HC–N, Memorandum item 1. The proposed breakdown of the total amount of restructured "other loans" in existing Memorandum item 1.b in both schedules would result in additional detail on loans already within the scope of ASC Subtopic 310–40. To the extent the clarifications emanating from the FASB proposed accounting standards update may result in BHCs having to report certain loans as troubled debt restructurings that had not previously been identified as such, this accounting outcome will arise irrespective of the proposed breakdown of the "other loans" category in Schedule HC–C, Memorandum item 1, and Schedule HC–N, Memorandum item 1. Therefore, the Federal Reserve will implement the new breakdown for the reporting of troubled debt restructurings as proposed.

2. Auto Loans

The Federal Reserve proposed to add a breakdown of the other consumer loans [5] or all other loans loan categories contained in several schedules in order to separately collect information on auto loans. The affected schedules would be Schedule HC–C, Loans and Lease Financing Receivables; Schedule HC–D, Trading Assets and Liabilities; Schedule HC–K, Quarterly Averages; Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets; Schedule HI, Income Statement; and Schedule HI–B, Part I, Charge-offs and Recoveries on Loans and Leases. Auto loans would include loans arising from retail sales of passenger cars and other vehicles such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use. This new loan category would exclude loans to finance fleet sales, personal cash loans secured by automobiles already paid for, loans to finance the purchase of commercial vehicles and farm equipment, and lease financing.

Automobile loans are a significant consumer business for many large BHCs. Because of the limited disclosure of auto lending on existing regulatory reports, supervisory oversight of auto lending is presently diminished by the need to rely on the examination process and public information sources that provide overall market information but not data on idiosyncratic risks.

Roughly 65 percent of new vehicle sales and 40 percent of used vehicle sales are funded with auto loans. According to household surveys and data on loan originations, commercial banks are an important source of auto loans. In 2008, this sector originated approximately one-third of all auto loans. Finance companies, both independent and those affiliated with auto manufacturers, originated a bit more than one-third, while credit unions originated a bit less than one-quarter. In addition to originating auto loans, some banks purchase auto loans originated by other entities, which suggests that commercial banks could be the largest holder of auto loans.

Despite the importance of BHCs to the auto loan market, the Federal Reserve knows less about BHCs' holdings of auto loans than is known about finance company, credit union, and savings association holdings of these loans. All nonbank depository institutions are required to report auto loans on their respective regulatory reports, including savings associations, which originate less than 5 percent of auto loans. On their regulatory reports, credit unions must provide not only the outstanding amount of new and used auto loans, but also the average interest rate and the number of loans. In a monthly survey, the Federal Reserve collects information on the amount of auto loans held by finance companies. As a consequence, during the financial crisis when funds were scarce for finance companies in general and the finance companies affiliated with automakers in particular, a lack of data on auto loans at banks hindered the Federal Reserve's ability to estimate the extent to which BHCs were filling in the gap in auto lending left by the finance companies.

Additional disclosure regarding consolidated auto loans on the FR Y–9C is especially important with the implementation of the amendments to FASBASC Topics 860, Transfers and Servicing, and 810, Consolidations, resulting from ASU No. 2009–16,[6] and ASU No. 2009–17,[7] respectively. Until 2010, Schedule HC–S, Servicing, Securitization, and Asset Sale Activities, had provided the best supervisory information on auto lending because it included a separate breakout of securitized auto loans outstanding as well as securitized auto loan delinquencies and charge-offs. The accounting changes brought about by the amendments to ASC Topics 860 and 810, however, mean that if the auto loan securitization vehicle is now required to be consolidated, securitized auto lending previously reported on Schedule HC–S will be grouped as part of other consumer loans or all other loans on Schedules HC–C, HC–K, HC–N, HI, and HI–B, Part I, which diminishes supervisors' ability to assess auto loan exposures and performance.

Finally, separating auto lending from other consumer loans will assist the Federal Reserve in understanding consumer lending activities at individual institutions. When an institution holds both auto loans and other types of consumer loans (other than credit cards, which are currently reported separately), the current

[5] As described later in this notice, the other consumer loans loan category was proposed to be added to Schedule HC–K beginning March 31, 2011.

[6] Formerly Statement of Financial Accounting Standards (SFAS) No. 166, *Accounting for Transfers of Financial Assets* (FAS 166).

[7] Formerly SFAS No. 167, *Amendments to FASB Interpretation No. 46(R)* (FAS 167).

combined reporting of these loans in the FR Y–9C tends to mask any significant differences that may exist in the performance of these portfolios. For example, a BHC could have a sizeable auto loan portfolio with low loan losses, but its other consumer lending, which could consist primarily of unsecured loans, could exhibit very high loss rates. The current blending of these divergent portfolios into a single loan category makes it difficult to adequately monitor consumer loan performance.

The banking agencies received three comments from banks and one comment from a bankers' association on the proposal to separately collect information on automobile loans in the Call Report schedules containing loan category data, comparable to the proposed changes to the FR Y–9C described above. The three banks requested an exemption from the proposed reporting requirements for smaller banks, with one of the banks seeking the exemption only for reporting auto loan interest income and quarterly averages. The bankers' association stated that this revision should not create a significant burden for future loans because core data processors generally have the ability to break out loan types, but it also asked for clarification on the reporting for situations in which auto loans are extended for multiple purposes. In addition, the bankers' association observed that some community banks do not have data readily available on the types or purposes of existing consumer loans, which would prevent them from determining the purpose of loans collateralized by autos, i.e., for the purchase of the auto or for some other purpose, without searching paper loan files.

After considering these comments, the Federal Reserve continues to believe the reporting of information on auto loans from all respondent BHCs is necessary for the Federal Reserve to carry out its supervisory and regulatory responsibilities and meet other public policy purposes. However, the Federal Reserve agrees that the reporting of interest income and quarterly averages for auto loans may be particularly burdensome for BHCs to report. Therefore, the Federal Reserve will not implement the proposed collection of auto loan data on Schedule HI, Income Statement, or Schedule HC–K, Quarterly Averages, in 2011. Instead, the Federal Reserve will evaluate the auto loan data that will begin to be collected in the other FR Y–9C schedules in March 2011 and reconsider whether to collect data on interest income and quarterly averages for auto loans. A decision to propose to collect auto loan interest income and quarterly averages would be subject to notice and comment.

Regarding the request for clarification of the reporting treatment for auto loans extended for multiple purposes and existing consumer loans with autos as collateral, the Federal Reserve has concluded that, to reduce burden, all consumer loans originated or purchased before April 1, 2011, that are collateralized by automobiles, regardless of the purpose of the loan, should be classified as auto loans and included in the new FR Y–9C items for auto loans. For consumer loans originated or purchased on or after April 1, 2011, BHCs should exclude from auto loans any personal cash loans secured by automobiles already paid for and consumer loans where some of the proceeds are used to purchase an auto and the remainder of the proceeds are used for other purposes.

3. Variable Interest Entities

In June 2009, the FASB issued accounting standards that have changed the way entities account for securitizations and special purpose entities (SPE). ASU No. 2009–16 (formerly FAS 166) revised ASC Topic 860, Transfers and Servicing, by eliminating the concept of a qualifying special-purpose entity (QSPE) and changing the requirements for derecognizing financial assets. ASU No. 2009–17 (formerly FAS 167) revised ASC Topic 810, Consolidations, by changing how a banking organization or other company determines when an entity that is insufficiently capitalized or is not controlled through voting or similar rights, for example a Variable Interest Entity (VIE), should be consolidated. For most banking organizations, ASU Nos. 2009–16 and 2009–17 took effect January 1, 2010.

Under ASC Topic 810, as amended, determining whether a BHC is required to consolidate a VIE depends on a qualitative analysis of whether that BHC has a "controlling financial interest" in the VIE and is therefore the primary beneficiary of the VIE. The analysis focuses on the BHC's power over and interest in the VIE. With the removal of the QSPE concept from GAAP that was brought about in amended ASC Topic 860, a BHC that transferred financial assets to an SPE that met the definition of a QSPE before the effective date of these amended accounting standards was required to evaluate whether, pursuant to amended ASC Topic 810, it must begin to consolidate the assets, liabilities, and equity of the SPE as of that effective date. Thus, when implementing amended ASC Topics 860 and 810 at the beginning of 2010, BHCs began to consolidate certain previously off-balance-sheet securitization vehicles, asset-backed commercial paper conduits, and other structures. Going forward, BHCs with variable interests in new VIEs must evaluate whether they have a controlling financial interest in these entities and, if so, consolidate them. In addition, BHCs must continually reassess whether they are the primary beneficiary of VIEs in which they have variable interests.

For those VIEs that banks must consolidate, the Federal Reserve's FR Y–9C instructional guidance advises institutions to report the assets and liabilities of these VIEs on the balance sheet (Schedule HC) in the category appropriate to the asset or liability. However, ASC paragraph 810–10–45–25 [8] requires a reporting entity to present "separately on the face of the statement of financial position: a. Assets of a consolidated VIE that can be used only to settle obligations of the consolidated VIE [and] b. Liabilities of a consolidated VIE for which creditors (or beneficial interest holders) do not have recourse to the general credit of the primary beneficiary." This requirement has been interpreted to mean that "each line item of the consolidated balance sheet should differentiate which portion of those amounts meet the separate presentation conditions." [9] In requiring separate presentation for these assets and liabilities, the FASB agreed with commenters on its proposed accounting standard on consolidation that "separate presentation * * * would provide transparent and useful information about an enterprise's involvement and associated risks in a variable interest entity." [10] The Federal Reserve concurs that separate presentation would provide similar benefits to them and other FR Y–9C users, particularly since data on securitized assets that are reconsolidated is no longer reported on Schedule HC–S, Servicing, Securitization, and Asset Sale Activities.

Consistent with the presentation requirements discussed above, the Federal Reserve proposed to add a new Schedule HC–V, Variable Interest Entities, to the FR Y–9C in which BHCs would report a breakdown of the assets of consolidated VIEs that can be used

[8] Formerly paragraph 22A of FIN 46(R), as amended by FAS 167.

[9] Deloitte & Touche LLP, "Back on-balance sheet: Observations from the adoption of FAS 167," May 2010, page 4 (*http://www.deloitte.com/view/en_US/us/Services/audit-enterprise-risk-services/Financial-Accounting-Reporting/f3a70ca28d9f8210VgnVCM200000bb42f00aRCRD.htm*).

[10] See paragraphs A80 and A81 of FAS 167.

only to settle obligations of the consolidated VIEs and liabilities of consolidated VIEs for which creditors do not have recourse to the general credit of the reporting BHC. The following proposed categories for these assets and liabilities would include some of the same categories presented on the balance sheet (Schedule HC): (1) Cash and balances due from depository institutions, (2) Held-to-maturity securities, (3) Available-for-sale securities, (4) Securities purchased under agreements to resell, (5) Loans and leases held for sale, (6) Loans and leases, net of unearned income, (7) Less: Allowance for loan and lease losses, (8) Trading assets (other than derivatives), (9) Derivative assets, (10) Other real estate owned, (11) Other assets, (12) Securities sold under agreements to repurchase, (13) Derivative liabilities, (14) Other borrowed money (other than commercial paper), (15) Commercial paper, and (16) Other liabilities. These assets and liabilities would be presented separately for securitization trusts, asset-backed commercial paper conduits, and other VIEs.

In addition, the Federal Reserve proposed to include two separate data items in new Schedule HC–V in which BHCs would report the total amounts of all other assets and all other liabilities of consolidated VIEs (i.e., all assets of consolidated VIEs that are not dedicated solely to settling obligations of the VIE and all liabilities of consolidated VIEs for which creditors have recourse to the general credit of the reporting BHC). The collection of this information would help the Federal Reserve understand the total magnitude of consolidated VIEs. These assets and liabilities would also be reported separately for securitization trusts, asset-backed commercial paper conduits, and other VIEs. The asset and liability information collected in Schedule HC–V would represent amounts included in the reporting BHC's consolidated assets and liabilities reported on Schedule HC, Balance Sheet, i.e., after eliminating intercompany transactions.

The banking agencies received one comment from a bankers' association that addressed proposed Call Report Schedule RC–V, which is comparable to proposed FR Y–9C Schedule HC–V. The bankers' association recommended a delayed effective date to allow sufficient time for systems modifications.

Because the FR Y–9C balance sheet is completed on a consolidated basis, the VIE amounts that BHCs would report in new Schedule HC–V are amounts that, through the consolidation process, already must be reported in the appropriate balance sheet asset and liability categories. These balance sheet categories, by and large, have been carried over into Schedule HC–V. Schedule HC–V distinguishes between assets of consolidated VIEs that can be used only to settle obligations of the consolidated VIEs and assets not meeting this condition as well as liabilities of consolidated VIEs for which creditors do not have recourse to the general credit of the reporting BHC and liabilities not meeting this condition. This distinction is based on existing disclosure requirements applicable to financial statements prepared in accordance with U.S. GAAP, to which the BHCs likely to have material amounts of consolidated VIE assets and liabilities to report have been subject for one year. Thus, these BHCs should have a process in place, even if manual, for segregating VIE assets and liabilities based on this distinction.

The Federal Reserve recognizes that the proposed separate reporting of consolidated VIE assets and liabilities by the type of VIE activity, i.e., securitization vehicles, asset-backed commercial paper conduits, and other VIEs, goes beyond the disclosure requirements in U.S. GAAP. Otherwise, the proposed data requirements for Schedule HC–V have been based purposely on the GAAP framework. Thus, the Federal Reserve has concluded that it is appropriate to proceed with the addition of new Schedule HC–V in March 2011, as proposed. BHCs are reminded that, as mentioned above, they may provide reasonable estimates in their March 31, 2011, FR Y–9C report for any new or revised item initially required to be reported as of that date for which the requested information is not readily available.

4. Life Insurance Assets

BHCs purchase and hold bank-owned life insurance (BOLI) policies as assets, the premiums for which may be used to acquire general account or separate account life insurance policies. BHCs currently report the aggregate amount of their life insurance assets in data item 5 of Schedule HC–F, Other Assets, without regard to the type of policies they hold.

Many BHCs have BOLI assets, and the distinction between those life insurance policies that represent general account products and those that represent separate account products has meaning with respect to the degree of credit risk involved as well as performance measures for the life insurance assets in a volatile market environment. In a general account policy, the general assets of the insurance company issuing the policy support the policy's cash surrender value. In a separate account policy, the policy's cash surrender value is supported by assets segregated from the general assets of the insurance carrier. Under such an arrangement, the policyholder neither owns the underlying separate account created by the insurance carrier on its behalf nor controls investment decisions in the account. Nevertheless, the policyholder assumes all investment and price risk.

A number of BHCs holding separate account life insurance policies have recorded significant losses in recent years due to the volatility in the markets and the vulnerability to market fluctuations of the instruments that are investment options in separate account life insurance policies. Information distinguishing between the cash surrender values of general account and separate account life insurance policies would allow the Federal Reserve to track BHCs' holdings of both types of life insurance policies with their differing risk characteristics and changes in their carrying amounts resulting from their performance over time. Accordingly, the Federal Reserve proposed to split data item 5 of Schedule HC–F into two data items: Data item 5.a, General account life insurance assets, and data item 5.b, Separate account life insurance assets.

The banking agencies received comments from two insurance consultants and an insurance company supporting the proposed revision to provide a breakdown of life insurance assets by type of policy on the Call Report, comparable to the proposed changes to the FR Y–9C described above. However, all three commenters noted that the evolution of life insurance products in recent years has led to a third type of policy becoming more prevalent in the banking industry: Hybrid accounts. Such accounts combine features of general and separate account products by providing the additional asset protection offered by separate accounts while also providing a guaranteed minimum interest-crediting rate, which is common to general accounts. They recommended that the proposal be revised from a two-way to a three-way breakdown of life insurance assets or, although not the preferable approach, advise banking institutions with hybrid account life insurance assets to report them together with general account life insurance assets because they have more general account characteristics.

Because of the Federal Reserve's interest in being better able to understand the risk characteristics of

BHCs' holdings of life insurance assets, the Federal Reserve will implement the three-way breakdown of these assets consistent with the commenters' recommendation.

5. Instructional Revisions

A. Reporting of 1–4 Family Residential Mortgages Held for Trading in Schedule HC–P

The Federal Reserve began collecting information in Schedule HC–P, 1–4 Family Residential Mortgage Banking Activities in Domestic Offices, in September 2006. At that time, the instructions for Schedule HC–C, Loans and Lease Financing Receivables, were written to indicate that loans generally could not be classified as held for trading. Therefore, all 1–4 family residential mortgage loans designated as held for sale were reportable in Schedule HC–P. In March 2008, the Federal Reserve provided instructional guidance establishing conditions under which BHCs were permitted to classify certain assets (*e.g.,* loans) as trading and specified that loans classified as trading assets should be excluded from Schedule HC–C, Loans and Lease Financing Receivables, and reported instead in Schedule HC–D, Trading Assets and Liabilities (if the reporting threshold for this schedule were met). However, the Federal Reserve neglected to address the reporting treatment on Schedule HC–P of 1–4 family residential loans that met the conditions for classification as trading assets. Therefore, the Federal Reserve proposed to correct this by providing explicit instructional guidance that all 1–4 family residential mortgage banking activities, whether held for sale or trading purposes, are reportable on Schedule HC–P.

The banking agencies received one comment from a bankers' association on the proposed guidance on the reporting of 1–4 family residential mortgages held for trading in Call Report Schedule RC–P, comparable to the proposed guidance to the FR Y–9C described above. The commenter supported the proposed clarification and requested further clarification on the reporting of repurchases and indemnifications in this schedule. The commenter suggested separate reporting of loan repurchases from indemnifications for all subitems of Call Report Schedule RC–P, item 6, "Repurchases and indemnifications of 1–4 family residential mortgage loans during the quarter."

In December 2010, the Federal Reserve clarified the FR Y–9C reporting instructions for Schedule HC–P, item 6, to explain which repurchases of 1–4 family residential mortgage loans are reportable in this item. Specifically, instructional guidance was provided stating that BHCs should exclude 1–4 family residential mortgage loans that have been repurchased solely at the discretion of the BHC from item 6. The Federal Reserve does not believe there is a supervisory need to separate the reporting of loan repurchases from indemnifications in Schedule HC–P, item 6.

B. Maturity and Repricing Data for Assets and Liabilities at Contractual Ceilings and Floors

BHCs report maturity and repricing data for debt securities (not held for trading) in Schedule HC–B, Securities. The Federal Reserve uses these data to assess, at a broad level, a BHC's exposure to interest rate risk. The instructions for reporting the maturity and repricing data currently require that when the interest rate on a floating rate instrument has reached a contractual floor or ceiling level, which is a form of embedded option, the instrument is to be treated as "fixed rate" rather than "floating rate" until the rate is again free to float. As a result, a floating rate instrument whose interest rate has fallen to its floor or risen to its ceiling is reported based on the time remaining until its contractual maturity date rather than the time remaining until the next interest rate adjustment date (or the contractual maturity date, if earlier). This reporting treatment is designed to capture the potential effect of the embedded option under particular interest rate scenarios.

The American Bankers Association (ABA) requested that the Federal Reserve reconsider the reporting treatment for floating rate instruments with contractual floors and ceilings. More specifically, the ABA recommended revising the reporting instructions so that floating rate instruments would always be reported based on the time remaining until the next interest rate adjustment date without regard to whether the rate on the instrument has reached a contractual floor or ceiling.

The Federal Reserve concluded that an instructional revision was warranted, but the extent of the revision should be narrower than recommended by the ABA. The Federal Reserve concluded that when a floating rate instrument is at its contractual floor or ceiling and the embedded option has intrinsic value to the BHC, the floor or ceiling should be ignored and the instrument should be treated as a floating rate instrument. However, if the embedded option has intrinsic value to the BHC's counterparty, the contractual floor or ceiling should continue to be taken into account and the instrument should be treated as a fixed rate instrument. For example, when the interest rate on a floating rate loan reaches its contractual ceiling, the embedded option represented by the ceiling has intrinsic value to the borrower and is a detriment to the BHC because the loan's yield to the BHC is lower than what it would have been without the ceiling. When the interest rate on a floating rate loan reaches its contractual floor, the embedded option represented by the floor has intrinsic value to the BHC and is a benefit to the BHC because the loan's yield to the BHC is higher than what it would have been without the floor.

Accordingly, the Federal Reserve proposed to revise the instructions for reporting maturity and repricing data in Schedule HC–B. As proposed, the instructions would indicate that a floating rate asset that has reached its contractual ceiling and a floating rate liability that has reached its contractual floor would be treated as a fixed rate instrument and reported based on the time remaining until its contractual maturity date. In contrast, the instructions would state that a floating rate asset that has reached its contractual floor and a floating rate liability that has reached its contractual ceiling would be treated as a floating rate instrument and reported based on the time remaining until the next interest rate adjustment date (or the contractual maturity date, if earlier).

The banking agencies received comments from two bankers' associations on this proposed instructional change. One bankers' association recommended the banking agencies adopt their proposed approach only for floating rate loans reported in Schedule RC–C, part I. This bankers' association opposed extending the same proposed approach to the other three Call Report schedules in which repricing data are reported for certain other floating rate instruments because its "members believe that not enough research has been completed" to understand the effect of the proposed instructional change on how these other instruments would be reported. The other bankers' association recommended against proceeding with the proposed instructional change because of the implementation burden associated with the multiple systems that would need to be revised. This association also observed that the revised information for floating rate instruments at contractual ceilings and floors would be commingled with the maturity and repricing information for

all of the other instruments in the same asset or liability category.

After considering the comments received, the banking agencies have decided not to change the instructions for reporting repricing information for floating rate instruments at contractual ceilings and floors. Such floating rate instruments should continue to be reported in accordance with the longstanding requirement that the instruments be treated as "fixed rate" rather than "floating rate" until their rate is again free to float. To maintain consistency between the Call Report and FR Y–9C reporting instructions, the Federal Reserve will retain the current instructions for reporting maturity and repricing information on FR Y–9C Schedule HC–B.

Revisions—FR Y–9LP

The Federal Reserve proposed to make the following revision to the FR Y–9LP effective as of March 31, 2011.

Troubled Debt Restructurings

To be consistent with revisions proposed for the FR Y–9C, the Federal Reserve proposed to modify the instructions for Schedule PC–B—Memoranda item 8, Loans and leases of the parent restructured in compliance with modified terms, to clearly indicate that the loans to be reported in this data item should be troubled debt restructurings and to exclude leases. Also the phrase "and leases" would be stricken from the caption of this data item. Under GAAP, troubled debt restructurings do not include changes in lease agreements. Also consistent with the proposed change to the FR Y–9C, the Federal Reserve proposed to revise the instructions for this data item to include (currently excluded) loans to individuals for household, family, and other personal expenditures and all loans secured by 1–4 family residential properties whose terms have been modified in troubled debt restructurings.

Like their comments to proposed revisions to the FR Y–9C, two bankers' associations commented that the Federal Reserve should defer proposed FR Y–9LP instructional modifications until the FASB finalizes proposed clarifications to the accounting for troubled debt restructurings by creditors. As discussed above, ASC Subtopic 310–40 provides the accounting basis for the current reporting of restructured troubled loan information on the FR Y–9LP. To the extent the clarifications emanating from the FASB proposed accounting standards update may result in BHCs having to report certain loans as troubled debt restructurings that had not previously been identified as such, this accounting outcome will arise irrespective of the proposed instructional modifications to the FR Y–9LP. Therefore, the Federal Reserve will implement the instructional modifications for the reporting of troubled debt restructurings as proposed.

2. Report title: Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies.

Agency form number: FR Y–11.

OMB control number: 7100–0244.

Effective Date: March 31, 2011.

Frequency: Quarterly and annually.

Reporters: Bank holding companies.

Annual reporting hours: FR Y–11 (quarterly): 15,966; FR Y–11 (annual): 2,768.

Estimated average hours per response: FR Y–11 (quarterly): 6.80; FR Y–11 (annual): 6.80.

Number of respondents: FR Y–11 (quarterly): 587; FR Y–11 (annual): 407.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act [5 U.S.C. 522(b)(4), (b)(6) and (b)(8)].

Abstract: The FR Y–11 reports collect financial information for individual non-functionally regulated U.S. nonbank subsidiaries of domestic BHCs. BHCs file the FR Y–11 on a quarterly or annual basis according to filing criteria. The FR Y–11 data are used with other BHC data to assess the condition of BHCs that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

Current Actions: On November 3, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 67721) requesting public comment for 60 days on the extension, with revision, of the Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies. The comment period expired on January 3, 2011. The Federal Reserve received one comment from a bankers' association recommending that the FR Y–11 and the FR 2314 be combined into a single form to enable the use of vendor software and electronic submission. The commenter stated that such functionalities are available on the FR Y–11 but are not available on the FR 2314.

The Federal Reserve has offered BHCs the option of submitting their FR 2314 reports electronically for several years. Any BHC interested in submitting their reports electronically should contact their Reserve Bank concerning procedures for electronic submission. Therefore, the Federal Reserve will not merge the reporting forms. As no comments were received on the proposed changes, the Federal Reserve will implement the changes as initially proposed.

3. Report title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314.

OMB control number: 7100–0073.

Effective Date: March 31, 2011.

Frequency: Quarterly and annually.

Reporters: Foreign subsidiaries of U.S. state member banks, BHCs, and Edge or agreement corporations.

Annual reporting hours: FR 2314 (quarterly): 16,394; FR 2314 (annual): 3,379.

Estimated average hours per response: FR 2314 (quarterly): 6.60; FR 2314 (annual): 6.60.

Number of respondents: FR 2314 (quarterly): 621; FR 2314 (annual): 512.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, and 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act [5 U.S.C. 522(b)(4), (b)(6) and (b)(8)].

Abstract: The FR 2314 reports collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks (SMBs), Edge and agreement corporations, and BHCs. Parent organizations (SMBs, Edge and agreement corporations, or BHCs) file the FR 2314 on a quarterly or annual basis according to filing criteria. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

Current actions: On November 3, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 67721) requesting public comment for 60 days on the extension, with revision, of the Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations. The comment period expired on January 3, 2011. The Federal

Reserve received one comment from a bankers' association recommending that the FR Y–11 and the FR 2314 be combined into a single form to enable the use of vendor software and electronic submission. The commenter stated that such functionalities are available on the FR Y–11 but are not available on the FR 2314.

The Federal Reserve has offered BHCs the option of submitting their FR 2314 reports electronically for several years. Any BHC interested in submitting their reports electronically should contact their Reserve Bank concerning procedures for electronic submission. Therefore, the Federal Reserve will not merge the reporting forms. As no comments were received on the proposed changes, the Federal Reserve will implement the changes as initially proposed.

4. Report title: Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations.

Agency form number FR Y–7N.

OMB control number: 7100–0125.

Effective Date: March 31, 2011.

Frequency: Quarterly and annually.

Reporters: Foreign banking organizations.

Annual reporting hours: FR Y–7N (quarterly): 4,978; FR Y–7N (annual): 1,299.

Estimated average hours per response: FR Y–7N (quarterly): 6.80; FR Y–7N (annual): 6.80.

Number of respondents: FR Y–7N (quarterly): 183; FR Y–7N (annual): 191.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c), 3106(c), and 3108). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. 522(b)(4) and (b)(6)].

Abstract: The FR Y–7N collects financial information for non-functionally regulated U.S. nonbank subsidiaries held by foreign banking organizations (FBOs) other than through a U.S. BHC, U.S. financial holding company (FHC) or U.S. bank. FBOs file the FR Y–7N on a quarterly or annual basis.

Current actions: On November 3, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 67721) requesting public comment for 60 days on the extension, with revision, of the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations. The comment period expired on January 3, 2011. As no comments were received on the proposed changes, the Federal Reserve will implement the changes as initially proposed.

5. Report title: Consolidated Report of Condition and Income for Edge and Agreement Corporations.

Agency form number: FR 2886b.

OMB control number: 7100–0086.

Effective Date: March 31, 2011.

Frequency: Quarterly.

Reporters: Edge and agreement corporations.

Annual reporting hours: 1,679.

Estimated average hours per response: 15.15 banking corporations, 9.60 investment corporations.

Number of respondents: 13 banking corporations, 42 investment corporations.

General description of report: This information collection is mandatory (12 U.S.C. 602 and 625). Schedules RC–M (with the exception of item 3) and RC–V are held as confidential pursuant to section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The mandatory FR 2886b comprises a balance sheet, income statement, two schedules reconciling changes in capital and reserve accounts, and 11 supporting schedules and it parallels the Call Report that commercial banks file. The Federal Reserve uses the data collected on the FR 2886b to supervise Edge corporations, identify present and potential problems, and monitor and develop a better understanding of activities within the industry.

Current actions: On November 3, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 67721) requesting public comment for 60 days on the extension, with revision, of the Consolidated Report of Condition and Income for Edge and Agreement Corporations. The comment period expired on January 3, 2011. As no comments were received on the proposed changes, the Federal Reserve will implement the changes as initially proposed.

Final approval under OMB delegated authority of the extension for three years, without revision of the following reports:

1. Report title: Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Frequency: Quarterly and annually.

Reporters: Bank holding companies.

Annual reporting hours: FR Y–9SP: 45,209; FR Y–9ES: 44; FR Y–9CS: 400.

Estimated average hours per response: FR Y–9SP: 5.40; FR Y–9ES: 30 minutes; FR Y–9CS: 30 minutes.

Number of respondents: FR Y–9SP: 4,186; FR Y–9ES: 87; FR Y–9CS: 200.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (b)(6)).

Abstract: The FR Y–9SP is a parent company only financial statement filed by smaller BHCs. Respondents include BHCs with total consolidated assets of less than $500 million. This form is a simplified or abbreviated version of the more extensive parent company only financial statement for large BHCs (FR Y–9LP). This report is designed to obtain basic balance sheet and income information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9ES collects financial information from ESOPs that are also BHCs on their benefit plan activities. It consists of four schedules: Statement of Changes in Net Assets Available for Benefits, Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements. The FR Y–9CS is a supplemental report that may be utilized to collect additional information deemed to be critical and needed in an expedited manner from BHCs. The information is used to assess and monitor emerging issues related to BHCs. It is intended to supplement the FR Y–9 reports, which are used to monitor BHCs between on-site inspections. The data items of information included on the supplement may change as needed.

Current actions: On November 3, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 67721) requesting public comment for 60 days on the extension, without revision, of the Financial Statements for Bank Holding Companies. The comment period expired on January 3, 2011. The Federal Reserve did not receive any comment letters.

2. Report title: Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies.

Agency form number: FR Y–11S.

OMB control number: 7100–0244.

Frequency: Annually.

Reporters: Bank holding companies.

Annual reporting hours: 774.

Estimated average hours per response: 1.0.

Number of respondents: 774.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6), and (b)(8) of the Freedom of Information Act [5 U.S.C. 522(b)(4)].

Abstract: The FR Y–11S is an abbreviated reporting form that collects four data items: Net income, total assets, equity capital, and total off-balance-sheet data items. The FR Y–11S is filed annually, as of December 31, by top-tier BHCs for each individual nonbank subsidiary (that does not meet the criteria for filing the detailed report) with total assets of at least $50 million, but less than $250 million, or with total assets greater than 1 percent of the total consolidated assets of the top-tier organization.

Current actions: On November 3, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 67721) requesting public comment for 60 days on the extension, without revision, of the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies. The comment period expired on January 3, 2011. The Federal Reserve did not receive any comment letters.

3. Report title: Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314S.

OMB control number: 7100–0073.

Frequency: Annually.

Reporters: U.S. state member banks, BHCs, and Edge or agreement corporations.

Annual reporting hours: 787.

Estimated average hours per response: 1.0.

Number of respondents: 787.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, and 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act [5 U.S.C. 522(b)(4), (b)(6) and (b)(8)].

Abstract: The FR 2314S is an abbreviated reporting form that collects four data items: Net income, total assets, equity capital, and total off-balance-sheet data items. The FR 2314S is filed annually, as of December 31, for each individual subsidiary (that does not meet the criteria for filing the detailed report) with assets of at least $50 million but less than $250 million, or with total assets greater than 1 percent of the total consolidated assets of the top-tier organization.

Current actions: On November 3, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 67721) requesting public comment for 60 days on the extension, without revision, of the Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations. The comment period expired on January 3, 2011. The Federal Reserve did not receive any comment letters.

4. Report title: Financial Reports of Foreign Banking Organizations.

Agency form number: FR Y–7NS, FR Y–7Q.

OMB control number: 7100–0125.

Frequency: Annually and quarterly.

Reporters: Foreign banking organizations.

Annual reporting hours: FR Y–7NS: 237; FR Y–7Q (quarterly): 340; FR Y–7Q (annual): 111.

Estimated average hours per response: FR Y–7NS: 1.0; FR Y–7Q (quarterly): 1.25; FR Y–7Q (annual): 1.0.

Number of respondents: FR Y–7NS: 237; FR Y–7Q (quarterly): 68; FR Y–7Q (annual): 111.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c), 3106(c), and 3108). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. 522(b)(4) and (b)(6)].

Abstract: The FR Y–7NS collect financial information for non-functionally regulated U.S. nonbank subsidiaries held by FBOs other than through a U.S. BHC, U.S. FHC, or U.S. bank. The FR Y–7NS is filed annually, as of December 31, by top-tier FBOs for each individual nonbank subsidiary (that does not meet the filing criteria for filing the detailed report) with total assets of at least $50 million, but less than $250 million. The FR Y–7Q collects consolidated regulatory capital information from all FBOs either quarterly or annually. FBOs that have effectively elected to become FHCs file the FR Y–7Q quarterly. All other FBOs (those that have not elected to become FHCs) file the FR Y–7Q annually.

Current actions: On November 3, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 67721) requesting public comment for 60 days on the extension, without revision, of the Financial Reports of Foreign Banking Organizations. The comment period expired on January 3, 2011. The Federal Reserve did not receive any comment letters.

Board of Governors of the Federal Reserve System, February 24, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–4568 Filed 3–1–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Comments on Human Subjects Protections in Scientific Studies

AGENCY: The Presidential Commission for the Study of Bioethical Issues, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues is requesting public comment on the Federal and international standards for protecting the health and well-being of participants in scientific studies supported by the Federal Government.

DATES: To assure consideration, comments must be received by May 2, 2011.

ADDRESSES: Individuals, groups, and organizations interested in commenting on this topic may submit comments by e-mail to *info@bioethics.gov* or by mail to the following address: Public Commentary, The Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave. NW., Suite C–100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Hillary Wicai Viers, Communications Director, The Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue, NW., Suite C–100, Washington, DC 20005. *Telephone:* 202–233–3963. *E-mail: Hillary.Viers@bioethics.gov.* Additional information may be obtained at *http://www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: On November 24, 2009, the President established the Presidential Commission for the Study of Bioethical Issues (Commission) to advise him on bioethical issues generated by novel and emerging research in biomedicine and related areas of science and technology. The Commission is charged to identify and promote policies and practices that assure ethically responsible conduct of scientific research, healthcare delivery,

and technological innovation. In undertaking these duties, the Commission seeks to identify and examine specific bioethical, legal, and social issues related to potential scientific and technological advances; examine diverse perspectives and possibilities for international collaboration on these issues; and recommend legal, regulatory, or policy actions as appropriate.

The Commission has begun a review of the current rules and standards for protecting human subjects in scientific studies supported by the Federal Government. The President requested this study on November 24, 2010, following revelations that the U.S. Public Health Service supported research on sexually transmitted diseases in Guatemala from 1946 to 1948 involving the intentional infection of vulnerable populations. President Obama asked the Commission Chair "to convene a panel to conduct * * * a thorough review of human subjects protection to determine if Federal regulations and international standards adequately guard the health and well-being of participants in scientific studies supported by the Federal Government."

The President charged the Commission to seek the insights and perspective of international experts and consult with counterparts in the global community. The Commission will provide the President with a report of its findings and recommendations later this year.

To implement this mission, the Commission wishes to develop a thorough understanding of the current U.S. and international standards for protecting the health and well-being of participants in scientific studies supported by the Federal Government. To this end, the Commission is inviting interested parties to provide input and advice through written comments. Among other issues, the Commission is interested in receiving comments on the existing standards for protecting human subjects, both domestically and internationally; how the current system of global research works in practice; and the ethical and social justice issues that emerge from the current research system. Comments concerning the benefits of medical research; differences across global norms and standards; standards for ancillary care and post-trial access to treatment; trial design; duties to participants; challenges, if any, faced by U.S.-funded researchers working internationally, or international researchers collaborating on U.S.-funded research; and other specific information are all especially welcome. The Commission is under a very tight deadline and would appreciate comments within 60 days.

Please address comments by e-mail to *info@bioethics.gov,* or by mail to the following address: Public Commentary, The Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave. NW., Suite C–100, Washington, DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Dated: February 17, 2011.

Valerie H. Bonham,

Executive Director, The Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2011–4658 Filed 3–1–11; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned subcommittee:

Time and Date: 9 a.m.–5 p.m., March 22, 2011.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, KY 41018. Telephone (859) 334–4611, Fax (859) 334–4619.

Status: Open to the public, but without a public comment period. To access by conference call dial the following information: (866) 659–0537, Participant Pass Code 9933701.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the ABRWH to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

Purpose: The ABRWH is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor.

Matters to be Discussed: The agenda for the Subcommittee meeting includes discussion of the following ORAU and OCAS procedures: ORAUT–RPRT–0044 ("Analysis of Bioassay Data with a Significant Fraction of Less-Than Results"), OCAS TIB–0013 ("Special External Dose Reconstruction Considerations for Mallinckrodt Workers"), OTIB–014 ("Rocky Flats Internal Dosimetry Co-Worker Extension"), OTIB–019 ("Analysis of Coworker Bioassay Data for Internal Dose Assignment"), OTIB–0029 ("Internal Dosimetry Coworker Data for Y–12"), OTIB–0047 ("External Radiation Monitoring at the Y–12 Facility During the 1948–1949 Period"), OTIB–0049 ("Estimating Doses for Plutonium Strongly Retained in the Lung"), OTIB–0052 ("Parameters to Consider When Processing Claims for Construction Trade Workers"), OTIB–0054 ("Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses"), and OTIB–

0070 ("Dose Reconstruction During Residual Radioactivity Periods at Atomic Weapons Employer Facilities"); and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

This meeting is open to the public, but without a public comment period. In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, GA 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, E-mail *dcas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: February 24, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–4597 Filed 3–1–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9978–N2]

Public Meeting of the Consumer Operated and Oriented Plan (CO–OP) Advisory Board, March 14, 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the third meeting of an advisory committee to the Center for Consumer Information and Insurance Oversight (CCIIO) in accordance with the Federal Advisory Committee Act. The meeting is open to the public. The purpose of the meeting is to assist and advise the Secretary and the Congress on the Department's strategy to foster the creation of qualified nonprofit health insurance issuers. Specifically, the Committee shall advise the Secretary and the Congress concerning the award of grants and loans related to Section 1322 of the Affordable Care Act, which provides for a Federal program to assist establishment and operation of nonprofit, member run health insurance issuers. In these matters, the Committee shall consult with all components of the Department, other federal entities, and non-Federal organizations, as appropriate; and examine relevant data sources to assess the grant and loan award strategy to provide recommendations to CCIIO.

DATES: *Meeting Date:* March 14, 2011 from 8:30 a.m. to 5 p.m., Eastern Standard Time (EST) *Deadline for Meeting Registration, Presentations and Comments:* March 10, 2011, 5 p.m., EST. *Deadline for Requesting Special Accommodations:* March 10, 2011, 5 p.m., EST.

ADDRESSES: *Meeting Location:* Madison Hotel, 1177 15th Street, NW., Washington, DC 20005.

Meeting Online Access: To participate in this meeting via the Internet, go to *http://www.readyshow.com/* and enter participant code 49888151. Note that audio of the meeting will only be broadcast through the conference phone line.

Meeting Phone Access: To participate in this meeting via phone, please dial into the toll free phone number 1–888–299–4099, and provide the following code to the operator: VW38426.

Meeting Registration, Presentations, and Written Comments: Anne Bollinger, Center for Consumer Information and Insurance Oversight, CMS, 200 Independence Avenue, SW., Washington, DC 20201, 301–492–395, *Fax:* 301–492–4462, or contact by e-mail at *anne.bollinger@hhs.gov.* Written comments must be submitted in Word format.

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the designated Federal official at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Anne Bollinger, 301–492–4395. Press inquiries are handled through CCIIO's Press Office at (202) 690–6343.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the meeting is to assist and advise the Secretary and the Congress on the Department's strategy to foster the creation of qualified nonprofit health insurance issuers. Specifically, the Committee shall advise the Secretary and the Congress concerning the award of grants and loans related to section 1322 of the Affordable Care Act, which provides for a Federal program to assist establishment and operation of nonprofit, member run health insurance issuers. In these matters, the Committee shall consult with all components of the Department, other Federal entities, and non-Federal organizations, as appropriate; and examine relevant data sources to assess the grant and loan award strategy to provide recommendations to CCIIO.

II. Meeting Agenda

The Committee will hear comments from the public and then begin deliberations on proposed recommendations presented by the work groups from the Committee. CCIIO intends to make background material available to the public no later than two (2) business days prior to the meeting. If CCIIO is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on CCIIO's Web site after the meeting, at *http://hhs.gov/CCIIO.*

Oral comments from the public will be scheduled between approximately 8:30 a.m.–9:30 a.m. Individuals or organizations that wish to make a 3-minute oral presentation on an agenda topic should submit a written copy in Word format of the oral presentation to the designated federal official (DFO) at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Persons attending CCIIO's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public comment session, CCIIO will take written comments after the meeting until close of business. Individuals not wishing to make a presentation may submit written comments in Word format to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Individuals requiring sign language interpretation or other special accommodations must contact the DFO via the contact information specified in

the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date listed in the **DATES** section of this notice.

CCIIO is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.hhs.gov/CCIIO* for procedures on public conduct during advisory committee meetings.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 24, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–4556 Filed 2–25–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0542]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Information Request Regarding Dissolvable Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by April 1, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *Fax:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title "Information Request Regarding Dissolvable Tobacco Products." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.Capezzuto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Information Request Regarding Dissolvable Tobacco Products—(OMB Control Number 0910–NEW)

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 917 of the Tobacco Control Act (21 U.S.C. 387q) requires the Secretary of Health and Human Services (the Secretary) to establish a Tobacco Products Scientific Advisory Committee (TPSAC). Section 907(f) of the Tobacco Control Act (21 U.S.C. 387g(f)) requires the TPSAC to submit a report and recommendations to the Secretary on the impact of the use of dissolvable tobacco products on the public health, including such use among children. To ensure a comprehensive review of this issue, FDA is requesting tobacco industry documents and information to support the work of TPSAC. Under section 907(f), TPSAC must submit its report and recommendations to the Secretary within 2 years after its establishment, or March 22, 2012.

In order to provide TPSAC with the information it needs to carry out its statutory obligation, FDA is requesting that tobacco companies submit information under section 904(b) of the Tobacco Control Act (21 U.S.C. 387d(b)) pertaining to documents and underlying scientific and financial information relating to research, and research findings, conducted, supported, or possessed by the manufacturer (or agents thereof) on a specified set of topics. For the purposes of this request, "research" may include, but is not limited to, focus groups, surveys, experimental clinical studies, postmarketing surveillance, toxicological and biochemical assays, taste panels, and assessments of the effectiveness of product marketing practices. Topics for which information relating to dissolvable tobacco products is requested are marketing research; marketing practices; effectiveness of marketing practices; and health, toxicological, behavioral, and physiological effects. FDA's request for documents related to dissolvable tobacco products includes, but is not limited to products for research, investigational use, developmental studies, test marketing, and/or commercial marketing, and also to the components, parts, or accessories of such products.

In the **Federal Register** of October 25, 2010 (75 FR 65490), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received eight comments from seven commenters; six comments pertaining to the notice, and two comments pertaining to the information collection. Six comments were beyond the scope of this information request (*e.g.,* tobacco is dangerous, dissolvable tobacco products are appealing to children, FDA should let the market prevail, FDA reviewers and TPSAC are not impartial). Comments relevant to the information request are addressed in this document.

One commenter suggested that they would like to withhold proprietary information or have FDA mark the information received as "confidential and proprietary", and would like FDA to explicitly state in the letter that FDA does not require nor accept publically available information. The commenter would like FDA to accept submission of lists, summaries, and abstracts as a first pass so FDA could then decide which documents it really needs, and would like FDA to better explain what it is looking for with regard to internal reports. The commenter would like FDA to restrict submissions to primary research data, and would like FDA to provide specific instructions for the citing of previously submitted documents so they can be fully referenced. FDA's response is that, with regard to confidential and proprietary information, documents submitted under section 904(b) of the FD&C Act may include, but are not limited to a company's non-public, trade secret, or confidential commercial information. FDA also notes that several laws govern maintaining the confidentiality of new tobacco product information submitted under section 904(b), including sections 301(j) and 906(c) of the FD&C Act (21 U.S.C. 331(j) and 387f(c)), the Trade Secrets Act (18 U.S.C. 1905), and the Freedom of Information Act (FOIA) (5 U.S.C. 552), as well as FDA's implementing regulations. FDA's general regulations concerning the public availability of FDA's records are contained in 21 CFR part 20. With

regard to the submission of summary lists instead of documents, it is the responsibility of manufacturers and importers to identify and submit all documents that are responsive to a request under section 904(b). Information which could be responsive to this section 904(b) request that has been previously provided to FDA does not have to be re-submitted as long as the document is fully referenced with information including file name and file extension, Bates number (begin Bates number to end Bates number), the date of submission, and relevant page numbers. If the documents were previously submitted to FDA under the section 904(a)(1), 904(c)(1), 904(c)(2) or 904(c)(3) requirement to submit listings of ingredients in tobacco products, FDA asks that the respondent please provide the date of submission, section under which the document was submitted, and the tobacco product brand/subbrand name and product identification number.

One commenter indicated that they bear responsibility for coordinating the implementation of the Tobacco Control Act for itself and its subsidiaries, and that they had already provided FDA with substantial information regarding dissolvable tobacco products in response to a February 1, 2010, request from FDA for this information. They also are concerned that FDA does not appear to give meaningful consideration to the burden imposed by FDA's requests, or to respondent's ideas for more efficient collections of information. The commenter hoped that FDA will consider the comments received as it continues to formulate future document and information collection requests and realize that FDA has seriously underestimated the time and cost burden to gather, review, and produce the requested documents. In addition, the commenter felt that FDA did not adequately explain how it calculated the estimated burden for respondents, as the 230 burden hours listed in the 60-day **Federal Register** notice may be accurate for manufacturers conducting peripheral research, but may not be that accurate for a large tobacco manufacturer. The commenter stated that they estimate it will take 10,000 hours to produce the documents FDA requested related to dissolvable tobacco products. The commenter stated that FDA has exhibited a pattern of underestimating burden associated with document production requests in the past, and that this collection runs counter to the PRA because the collection does not minimize respondent burden, and will have no practical utility to FDA. The commenter also asked that FDA, rather than respondents, identify previously submitted documents because they should be able to produce this information using commonly available commercial software. The commenter re-emphasized that FDA and TPSAC would be unable to process the sheer volume of this information, so it has little practical utility and does not minimize paperwork burden in violation of the PRA. They ask that FDA revise its estimated time and burden on manufacturers, allow time for meaningful review, and maximize the practical utility of this collection. In estimating the initial burden for this collection, FDA utilized its staff expertise and previous experience with similar types of Agency collections to determine the burden. While FDA understands that there appears to be a large discrepancy in burden between this commenter's estimate and FDA's estimate, FDA did follow a methodology to determine as accurate an estimate of average burden as possible. However, due to the comments received for this information collection and other comments submitted by stakeholders, FDA has revised the burden for this collection. Information received by the public directly and in response to requests for comments will assist FDA in determining more accurate burden estimates in the future. With regard to the submission of documents previously, it is the responsibility of manufacturers and importers to identify and submit all documents that are responsive to a request under section 904(b). As stated in the 60-day **Federal Register** notice (75 FR 65490) and letter, information responsive to this section 904(b) request which has been previously submitted to FDA under the Tobacco Control Act does not have to be re-submitted as long as the document is fully referenced.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Activity	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours	Total capital costs
Submission of Dissolvable Tobacco Product Documents Under Section 904(b)						
Large Tobacco Manufacturers or Importers	3	1	3	7,500	22,500	$435
Small to Medium Tobacco Product Manufacturers or Importers	7	1	7	230	1,610	324
Submission of Letter indicating no documents available	110	1	110	1	110	165
Total	120		120		24,220	924

FDA has adjusted the burden for this information collection based on stakeholder and public comments received for this collection of information. Originally, FDA estimated that 10 tobacco manufacturers would be responsible for submitting documents, and that their burden would average 230 hours each. After reviewing comments, FDA still maintains that 10 tobacco manufacturers will be responsible for submitting documents, and has now broken the burden into three tiers—large manufacturers and importers, small to medium manufacturers and importers, and manufacturers who are only required to submit a letter indicating that they have no tobacco documents to submit. As shown in table 1, FDA now estimates that 3 large manufacturers are estimated to take approximately 7,500 hours apiece to provide dissolvable tobacco product documents, 7 small to medium manufactures are estimated to take approximately 230 hours apiece to provide dissolvable tobacco product documents, and 110 other manufacturers who do not have documents, do not manufacture dissolvable tobacco products, or do not

anticipate manufacturing dissolvable tobacco products will take approximately 1 hour to draft and send a letter to FDA indicating that they do not have documents to submit. These estimates were derived based upon FDA experience and feedback provided by public and stakeholder comments.

The capital costs associated with this collection pertain to the postage for mailing documents in electronic or paper formats. Estimating these costs is problematic because the costs will vary depending on the size of the document production (*e.g.* one binder of documents vs. numerous boxes of paper) and the media type (*e.g.,* compact disk (CD) or digital video disk) chosen to submit documents. Currently, we cannot identify how many documents will be submitted per response.

Some sample postage costs are shown for different types of packages:

- 10 CDs in a flat envelope weighing 30 ounces: approximately $8.00 using first class business mail
- 5-pound parcel containing paper documents: approximately $12 using business parcel post mail and delivering to the furthest delivery zone
- 10-pound parcel containing paper documents: approximately $17 using business parcel mail and delivering to the furthest delivery zone
- 50-pound parcel containing paper documents: approximately $52 using business parcel post mail and delivering to the furthest delivery zone.

FDA estimates the capital costs associated with this document submission to be $924. The capital costs determined by this estimate are based upon 3 submissions for large manufacturers, 7 submissions for small to medium manufacturers, and 110 submissions of 1 letter apiece for those who do not either manufacture dissolvable tobacco products or have documents pertaining to the manufacture of dissolvable tobacco products.

For the three large manufacturers, it is estimated that each manufacturer will submit their documents electronically on the equivalent of one 500-gigabyte external hard drive of data. This is estimated to cost approximately $125 per drive, and $20 to ship the drive, for a total of $435 (3 manufacturers × [$125 + $20]).

For the 7 small to medium sized manufacturers, it is estimated that 5 manufacturers (about 71 percent) will submit their documents electronically on the equivalent of 10 CD–ROMs. This is estimated to cost $20 for the 10 CD–ROM spindle, and $8 to ship each group of 10 CDs per envelope for a total of $140 (5 manufacturers × [$20 + $8]). The remaining two manufacturers will submit their documents via paper, which is estimated to cost $184 (2 manufacturers × [$40 cost of one box of paper + $52 to ship the box of paper]). The total capital cost for small to medium manufacturers, therefore, is estimated to be $324 ($140 + $184).

For the remaining 110 manufacturers who must submit a letter to FDA indicating that they do not have any documents, it is estimated that each manufacturer will use $1 of paper products and pay postage approximating a rounded figure of $0.50 for a total of $165 (110 manufacturers × [$1.00 + $0.50]). Therefore, FDA estimates the total capital costs associated with this document submission to be $924.

Dated: February 24, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–4613 Filed 3–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–P–0201]

Determination That NILSTAT (Nystatin Powder (Oral, 100%)) Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that NILSTAT (nystatin powder (oral, 100%)) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for nystatin powder (oral, 100%) if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Stevens, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6316, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

NILSTAT (nystatin powder (oral, 100%)) is the subject of NDA 050576, held by Dava Pharmaceuticals, Inc., and was initially approved on December 22, 1983. NILSTAT is indicated for the treatment of intestinal and oral cavity infections caused by *Candida (Monilia) albicans.* NILSTAT (nystatin powder (oral, 100%)) is currently listed in the "Discontinued Drug Product List" section of the Orange Book.

Paddock Laboratories, Inc., submitted a citizen petition dated April 8, 2010 (Docket No. FDA–2010–P–0201), under 21 CFR 10.30, requesting that the Agency determine whether NILSTAT (nystatin powder (oral, 100%)) was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, FDA has determined under § 314.161 that NILSTAT (nystatin powder (oral, 100%)) was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that NILSTAT (nystatin powder (oral, 100%)) was

withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of NILSTAT (nystatin powder (oral, 100%)) from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events and have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list NILSTAT (nystatin powder (oral, 100%)) in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to NILSTAT (nystatin powder (oral, 100%)) may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 24, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4595 Filed 3–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0318]

Determination That MEGACE (Megestrol Acetate) Tablets and Nine Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the 10 drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Olivia Pritzlaff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6308, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, a drug is withdrawn from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved; (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved; and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for reasons of safety or effectiveness, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed. (As requested by the applicants, FDA withdrew approval of NDA 18–101 for SYMMETREL (amantadine hydrochloride (HCl)) Tablets and ANDA 84–935 for DEXEDRINE (dextroamphetamine sulfate) Tablets in the **Federal Register** of July 21, 2010 (75 FR 42455).)

Application No.	Drug	Applicant
NDA 16–979	MEGACE (megestrol acetate) Tablets, 20 milligrams (mg) and 40 mg.	Bristol Myers Squibb, P.O. Box 4000, Princeton, NJ 08543–4000.
NDA 17–911	CLINORIL (sulindac) Tablet, 150 mg	Merck Research Laboratories, Sumneytown Pike, West Point, PA 19486.
NDA 18–101	SYMMETREL (amantadine HCl) Tablet, 100 mg	Endo Pharmaceuticals, Inc., 100 Endo Blvd., Chadds Ford, PA 19317.
NDA 18–482	PROCARDIA (nifedipine) Capsule, 20 mg	Pfizer Inc., 235 East 42nd St., New York, NY 10017–5755.
NDA 18–768	VEPESID (etoposide) Injection, 20 mg/milliliter (mL)	Bristol Myers Squibb.
NDA 20–262	TAXOL (paclitaxel) Injection, 6 mg/mL	Do.
NDA 20–450	CEREBYX (fosphenytoin sodium) Injection, Equivalent to (EQ) 50 mg phenytoin sodium/mL.	Parke Davis, 2800 Plymouth Rd., Ann Arbor, MI 48106–1047.
NDA 50–527	DURICEF (cefadroxil/cefadroxil hemihydrate) Oral Suspension, EQ 250 mg base/5mL and EQ 500 mg base/5 mL.	Warner Chilcott, Inc., 100 Enterprise Dr., Suite 280, Rockaway, NJ 07866.
ANDA 84–051	DEXTROSTAT (dextroamphetamine sulfate) Tablets, 5 mg and 10 mg.	Shire Development, Inc., 725 Chesterbrook Blvd., Wayne, PA 19087.

Application No.	Drug	Applicant
ANDA 84–935	DEXEDRINE (dextroamphetamine sulfate) Tablet, 5 mg	GlaxoSmithKline, 5 Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709–3398.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines the labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 24, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4594 Filed 3–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Oncologic Drugs 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: Oncologic Drugs 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 April 12, 2011, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading "Resources for You," click on "White Oak Conference Center Parking and Transportation Information for FDA Advisory Committee Meetings." Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Caleb Briggs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *e-mail: caleb.briggs@fda.hhs.gov,* 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 April 12, 2011, during the morning session, the committee will discuss supplemental new drug application (sNDA) 022334/S–009, trade name AFINITOR (everolimus) tablets, application submitted by Novartis Pharmaceuticals Corp. The proposed indication (use) for this product is for the treatment of patients with advanced neuroendocrine tumors (NET) of gastrointestinal, lung, or pancreatic origin.

During the afternoon session, the committee will discuss sNDA 021938/S–013, trade name SUTENT (sunitinib malate) capsules, application submitted by C.P. Pharmaceuticals International C.V., represented by Pfizer, Inc. (authorized U.S. agent). The proposed indication (use) for this product is for the treatment of unresectable pancreatic neuroendocrine tumors (PNET).

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 March 29, 2011. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m. and 3:30 p.m. to 4 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 March 21, 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 March 22, 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 Caleb Briggs 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: February 24, 2011.

Thinh Nguyen,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–4614 Filed 3–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0033]

Withdrawal of Approval of New Animal Drug Applications; Phenylbutazone; Pyrantel; Tylosin; Sulfamethazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of eight new animal drug applications (NADAs). In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations to remove portions reflecting approval of these NADAs.

DATES: Withdrawal of approval is effective March 14, 2011.

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

SUPPLEMENTARY INFORMATION: The sponsors in table 1 have requested that FDA withdraw approval of the three NADAs listed because the products are no longer manufactured or marketed.

TABLE 1—VOLUNTARY REQUESTS FOR WITHDRAWAL OF APPROVAL (WOA) OF THREE NADAS

Sponsor	NADA No. product (established name of drug)	21 CFR Section affected (sponsor drug labeler code)
First Priority, Inc., 1590 Todd Farm Dr., Elgin, IL 60123	NADA 48–647, Phenylbutazone boluses (phenylbutazone)	520.1720a (058829).
Yoder Feed, Division of Yoder, Inc., Kalona, IA 52247	NADA 96–161, Hy-Con TYLAN Premix (tylosin phosphate)	558.625 (035369).
Triple "F", Inc., 10104 Douglas Ave., Des Moines, IA 50322	NADA 119–062, Cadco-BN–10 BANMINTH Premix (pyrantel tartrate).	558.485 (011490).

Truow Nutrition, Inc., 1590 Todd Farm Dr., Elgin, IL 60123 (Truow), has informed FDA that it is the sponsor of five feed premix NADAs previously owned by milling companies, which it purchased. NADA 100–352 was owned by NutriBasics Co., last doing business at P.O. Box 1014, Willmar, MN 56201. NADA 107–002 and NADA 123–000 were owned by Seeco, Inc., also last doing business at P.O. Box 1014, Willmar, MN 56201. NADA 133–833 and NADA 135–243 were owned by Southern Micro-Blenders, Inc., last doing business at 3801 North Hawthorne St., Chattanooga, TN 37406. Truow has requested that FDA withdraw approval of the five NADAs in table 2 because they are no longer manufactured or marketed.

TABLE 2—VOLUNTARY REQUESTS FOR WOA OF FIVE NADAS BY TRUOW NUTRITION, INC.

Previous sponsor	NADA No., product (established name of drug)	21 CFR section affected (sponsor drug labeler code)
NutriBasics Co., North Highway 71, P.O. Box 1014, Willmar, MN 56201.	NADA 100–352, Seeco T–10 Premix (tylosin phosphate)	558.625 (053740).
Seeco, Inc., P.O. Box 1014, North Highway 71, Willmar, MN 56201.	NADA 107–002, Seeco TYLAN–Sulfa 10 Premix (tylosin phosphate and sulfamethazine).	Not codified.
Seeco, Inc., P.O. Box 1014, North Highway 71, Willmar, MN 56201.	NADA 123–000, Super Swine Wormer B–9 BANMINTH (pyrantel tartrate).	558.485 (011749).
Southern Micro-Blenders, Inc., 3801 North Hawthorne St., Chattanooga, TN 37406.	NADA 133–833, TYLAN 10 Premix (tylosin phosphate)	558.625 (049685).
Southern Micro-Blenders, Inc., 3801 North Hawthorne St., Chattanooga, TN 37406.	NADA 135–243, Swine Guard-BN BANMINTH Premix (pyrantel tartrate).	558.485 (049685).

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADAs 48–647, 96–161, 100–352, 107–002, 119–062, 123–000, 133–833, and 135–243, and all supplements and amendments thereto, is hereby withdrawn, effective March 14, 2011.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these NADAs.

Dated: February 18, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–4545 Filed 3–1–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Retention Survey of NHSC Clinicians and Alumni/NHSC Site Administrators—(OMB No. 0915–NEW)

The National Health Service Corps (NHSC) Loan Repayment and Scholarship Programs were established to assure an adequate supply of trained primary care health care professionals to provide services in the neediest Health Professional Shortage Areas (HPSAs) of the United States. Under these programs, the Department of Health and Human Services agrees to repay the educational loans of, or provide scholarships to, primary care health professionals. In return, the professionals agree to serve for a specified period of time in a federally designated HPSA approved by the Secretary. The last survey conducted to analyze retention of NHSC clinicians is more than 10 years old. There is a need to distribute a survey to reevaluate the personal/professional development of NHSC clinicians in an effort to retain the clinicians in service providing care for individuals residing in underserved areas. The survey will ask current and former NHSC clinicians questions regarding professional satisfaction, expectations of being in the NHSC, and about their experiences at NHSC sites. The survey will also ask NHSC site administrators questions about the sites and about the attributes of the current and former NHSC clinicians at sites.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Survey of Site Administrators	500	1	500	.125	62.50
Survey of NHSC Clinicians in Service (LRP)	2,740	1	2,740	.11	301.40
Survey of NHSC Clinicians in Service (Scholars)	536	1	536	.14	75.04
Survey of NHSC Recent Alumni (LRP)	2,393	1	2,393	.23	550.39
Survey of NHSC Recent Alumni (Scholars)	435	1	435	.10	43.50
Survey of Remote NHSC Alumni	860	1	860	.15	129
Total	7,464		7,464		1161.83

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: February 24, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–4623 Filed 3–1–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council on Blood Stem Cell Transplantation; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill expected vacancies on the Advisory Council on Blood Stem Cell Transplantation.

The Advisory Council on Blood Stem Cell Transplantation was established pursuant to Public Law 109–129 as amended by Public Law 111–264; 42 U.S.C. 274k; Section 379 of the Public Health Service Act. In accordance with Public Law 92–463, the Council was chartered on December 19, 2006.

DATES: The agency must receive nominations on or before April 1, 2011.

ADDRESSES: Nominations should be submitted to the Executive Secretary, Advisory Council on Blood Stem Cell Transplantation, Healthcare Systems Bureau, HRSA, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857. Federal Express, Airborne, UPS, or mail delivery should be addressed to Executive Secretary, Advisory Council on Blood Stem Cell Transplantation, Healthcare Systems Bureau, HRSA, at the above address. Nominations submitted electronically should be e-mailed to *ptongele@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Stroup, M.B.A., M.P.A., Executive Secretary, Advisory Council on Blood Stem Cell Transplantation, at (301) 443–1127 or e-mail *pstroup@hrsa.gov* or Robert Baitty, Director, Blood Stem Cell Transplantation Program, Division of Transplantation, at (301) 443–2612 or e-mail *rbaitty@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The Council was established to implement a statutory requirement of the Stem Cell Therapeutic and Research Act of 2005 (Pub. L. 109–129). The Council is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

The Advisory Council advises the Secretary and the Administrator, HRSA, on matters related to the activities of the C.W. Bill Young Cell Transplantation Program and the National Cord Blood Inventory Program.

The Council shall, as requested by the Secretary, discuss and make recommendations regarding the C.W. Bill Young Cell Transplantation Program (Program). It shall provide a consolidated, comprehensive source of expert, unbiased analysis and recommendations to the Secretary on the latest advances in the science of blood stem cell transplantation. The

Council shall advise, assist, consult and make recommendations, at the request of the Secretary, on broad Program policy in areas such as the necessary size and composition of the adult donor pool available through the Program and the composition of the National Cord Blood Inventory, requirements regarding informed consent for cord blood donation, accreditation requirements for cord blood banks, the scientific factors that define a cord blood unit as high quality, public and professional education to encourage the ethical recruitment of genetically diverse donors and ethical donation practices, criteria for selecting the appropriate blood stem source for transplantation, Program priorities, research priorities, and the scope and design of the Stem Cell Therapeutic Outcomes Database. It also shall, at the request of the Secretary, review and advise on issues relating more broadly to the field of blood stem cell transplantation, such as regulatory policy including compatibility of international regulations, and actions that may be taken by the State and Federal Governments and public and private insurers to increase donation and access to transplantation. The Advisory Council also shall make recommendations regarding research on emerging therapies using cells from bone marrow and cord blood.

The Council consists of up to 25 members, including the Chair. Members of the Advisory Council shall be chosen to ensure objectivity and balance, and reduce the potential for conflicts of interest. The Secretary shall establish bylaws and procedures to prohibit any member of the Advisory Council who has an employment, governance, or financial affiliation with a donor center, recruitment organization, transplant center, or cord blood bank from participating in any decision that materially affects the center, recruitment organization, transplant center, or cord blood bank; and to limit the number of members of the Advisory Council with any such affiliation.

The members and chair shall be selected by the Secretary from outstanding authorities and representatives of marrow donor centers and marrow transplant centers; representatives of cord blood banks and participating birthing hospitals; recipients of a bone marrow transplant; recipients of a cord blood transplant; persons who require such transplants; family members of such a recipient or family members of a patient who has requested the assistance of the Program in searching for an unrelated donor of bone marrow or cord blood; persons with expertise in bone marrow and cord blood transplantation; persons with expertise in typing, matching, and transplant outcome data analysis; persons with expertise in the social sciences; basic scientists with expertise in the biology of adult stem cells; ethicists, hematology and transfusion medicine researchers with expertise in adult blood stem cells; persons with expertise in cord blood processing; and members of the general public.

In addition, representatives from the Division of Transplantation of the Health Resources and Services Administration, the Department of Defense Marrow Recruitment and Research Program operated by the Department of the Navy, the Food and Drug Administration, the National Institutes of Health, the Centers for Medicare and Medicaid Services, and the Centers for Disease Control and Prevention serve as non-voting ex officio members.

Specifically, HRSA is requesting nominations for voting members of the Advisory Council on Blood Stem Cell Transplantation in these categories: marrow donor centers and transplant center representatives; cord blood banks and participating hospitals representatives; recipients of cord blood transplant; family members of bone marrow transplant and cord blood transplant recipients or family members of a patient who has requested assistance by the Program in searching for an unrelated donor; persons with expertise in bone marrow or cord blood transplantation; persons with expertise in typing, matching, and transplant outcome data analysis; persons with expertise in social sciences; basic scientists with expertise in the biology of adult stem cells; researchers in hematology and transfusion medicine with expertise in adult blood stem cells; persons with expertise in cord blood processing; and members of the general public. Nominees will be invited to serve a 2- to 6-year term beginning after January 1, 2012.

HHS will consider nominations of all qualified individuals to ensure that the Advisory Council includes the areas of subject matter expertise noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the Advisory Council. Nominations shall state that the nominee is willing to serve as a member of the Council. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the Council to permit evaluation of possible sources of conflicts of interest. In addition, nominees will be asked to provide detailed information concerning any employment, governance, or financial affiliation with any donor centers, recruitment organizations, transplant centers, and/or cord blood banks.

A nomination package should be sent in as hard copy, e-mail communication, or on compact disc. A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (3) the name, return address, e-mail address, and daytime telephone number at which the nominator can be contacted.

The Department strives to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS Federal advisory committees and, therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the committee. Appointment to this Council shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Dated: February 24, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–4627 Filed 3–1–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice for Request for Nominations

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Request for Nominations.

SUMMARY: The Health Resources and Services Administration (HRSA) is

requesting nominations to fill current vacancies on three of the four Federal advisory committees administered by the Bureau of Health Professions: Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD), Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL), and the Council on Graduate Medical Education (COGME).

DATES: The Agency must receive nominations on or before April 13, 2011.

ADDRESSES: All nominations are to be submitted either by mail to Laura Burns, Bureau of Health Professions (BHPr), HRSA, Parklawn Building, Room 9–49, 5600 Fishers Lane, Rockville, Maryland 20857, or e-mail to *lburns@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Laura Burns, BHPr, by e-mail *lburns@hrsa.gov* or telephone at 301–443–6873. A copy of the current committee memberships, charters and reports can be obtained by accessing the HRSA Web site at *http://www.hrsa.gov/advisorycommittees/advisorycmte.html.*

SUPPLEMENTARY INFORMATION: Under the authorities that established these committees and the Federal Advisory Committee Act, HRSA is requesting nominations for membership on three committees.

The *Advisory Committee on Training in Primary Care Medicine and Dentistry* (ACTPCMD) provides advice and recommendations to the Secretary of the Department of Health and Human Services (the Secretary) and Congress on policy and program development concerning medicine, general pediatrics, general dentistry, pediatric dentistry and physician assistant programs. The ACTPCMD produces an annual report to the Secretary and Congress on issues related to improving public health, eliminating health care disparities, developing cultural competencies, and serving vulnerable populations. Meetings are held at least twice a year.

The *Advisory Committee on Interdisciplinary, Community-Based Linkages* (ACICBL) provides advice and recommendations on policy and program development to the Secretary and Congress concerning the BHPr programs that support interdisciplinary community-based training. The ACICBL also provides advice on programmatic matters concerning Area Health Education Centers, Health Education Training Centers, and the disciplines of Geriatrics and Allied Health. Meetings for this committee are held at least three times a year.

The *Council on Graduate Medical Education* (COGME) provides advice and makes policy recommendations to the Secretary and Congress on matters concerning the supply and distribution of physicians in the United States, physician workforce trends, training issues and financing policies. The COGME reports on such topics as primary care physician shortages and the long-term needs of the physician workforce. Meetings are held approximately twice a year.

All of the committees are charged with drafting annual reports to the Secretary and Congress regarding the activities within their purview. Qualified candidates will be invited to serve a 3-year term for ACTPCMD and ACICBL, and a 4-year term for COGME. Members for all committees will receive a stipend for each day (including travel time) during which such members are attending official meetings of a committee, as well as per diem and travel expenses as authorized by section 5 U.S.C. 5703 for persons employed intermittently in Government service. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, research grants, and/or contracts to permit an evaluation of possible sources of conflicts of interest.

The Secretary appoints members who are practicing health professionals engaged in training, leaders from health professions organizations, faculty from health professions educational institutions, and health professionals working in public or private teaching hospitals or community-based settings.

The Department of Health and Human Services (the Department) is requesting numerous nominations for members who represent disciplines and stakeholder groups such as:

- Disciplines
  - Medicine (allopathic and osteopathic)
  - Family medicine
  - General internal medicine
  - General pediatrics
  - Interdisciplinary education with a focus on underserved areas
  - Interdisciplinary geriatric training
  - Physician assistant
  - Dentistry
  - General dentistry
  - Pediatric dentistry
  - Dental hygiene
  - Nursing
  - Advanced education nursing
  - Interdisciplinary education with a focus on underserved areas
  - Other Disciplines and Expertise
  - Allied health
  - Chiropractic medicine
  - Clinical social work
  - Graduate clinical psychology
  - Podiatric medicine (preventive and primary care)
  - Professional counseling
  - Geriatrics
  - Students, residents or fellows representing the following schools:
    - Medicine (allopathic and osteopathic)
    - Physician assistant
    - Dentistry
    - Nursing
    - Graduates of International Medical Schools
  - Stakeholder Organizations
    - Health professions organizations (including physicians, nursing and physician assistant organizations)
    - Health insurers
    - Business organizations interested in health professions recruitment and placement
    - Labor organizations representing health professions
    - Teaching hospitals, community hospitals and other institutions.

The Department is required to ensure that the membership of Federal advisory committees is fairly balanced in terms of points of view represented and the functions to be performed by the advisory committee. Every effort is made to ensure that the views of women, ethnic and racial groups, and people with disabilities are represented on the Federal advisory committees. The Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in composition of these committees. Appointment to these committees shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Interested persons may nominate one or more qualified persons for membership. Self-nominations are also accepted. Nominations must be typewritten. The following information should be included in the package of materials submitted for each individual being nominated: (1) A letter of nomination that includes: (a) The name and affiliation of the nominee, (b) the basis for the nomination (*i.e.,* specific attributes that qualify the nominee for services in this capacity), (c) the committee or committees on which the nominee is eligible to serve as well as the nominee's committee preference; (2) contact information for both the nominator and nominee; (3) a current copy of the nominee's curriculum vitae; and (4) a statement of interest from the nominee stating that the nominee is willing to serve and has no apparent

conflict of interest that would preclude membership.

Authority: Sections 749, 757, and 762 of the Public Health Service (PHS) Act, (42 U.S.C. 293l, 294f, 294o, and 297t), as amended by the Affordable Care Act. These committees, except where otherwise indicated in law, are governed by the Federal Advisory Committee Act, Public Law (Pub. L.) 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: February 24, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

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BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

List of Recipients of Indian Health Scholarships Under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94–437) provide at 42 CFR 136.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and Tribal affiliation, if applicable. These scholarships were awarded under the authority of Sections 103 and 104 of the Indian Health Care Improvement Act, 25 U.S.C. 1613–1613a, as amended by the Indian Health Care Amendments of 1988, Public Law 100–713.

The following is a list of Indian Health Scholarship Recipients funded under Sections 103 and 104 for Fiscal Year 2010:

Adakai, Margaret Kabotie, Northern Arizona University, Hopi Tribe of Arizona
Akers, Tia Rose, Bryan Leigh College of Health Sciences, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Alexander, Laura Lee, Pennsylvania College of Optometry, Native Village of Selawik
Alkire, Savannah Jade, University of Mary, Standing Rock Sioux Tribe of North & South Dakota
Allshouse, Marlene Dohi, Grand Canyon University, Navajo Nation, Arizona, New Mexico & Utah
Alvarez, Michon Marie, University of Alaska, Cheesh-Na Tribe (Formerly the Native Village of Chistochina)
Amdur-Clark, Micah Evan, Northeastern University, Citizen Potawatomi Nation, Oklahoma
Anagale, Paul Todd, University of Minnesota, Navajo Nation, Arizona, New Mexico & Utah
Avery, Shaela Ann, University of Utah, Navajo Nation, Arizona, New Mexico & Utah
Azure, Brittany Marie, University of Mary, Turtle Mountain Band of Chippewa Indians of North Dakota
Azure, Jeri Ann, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Azure, Joan Marie, Dakota State College, Turtle Mountain Band of Chippewa Indians of North Dakota
Azure, Krysten Ross, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Babbitt, Jonathan, University of Oklahoma Health Sciences Center, Navajo Nation, Arizona, New Mexico & Utah
Bacon, Kyle, Idaho State University, Shoshone Tribe of the Wind River Reservation, Wyoming
Baker, Michele Rene', University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Barrett, Haley Nicole, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Battese, Anthony Steven, Northeastern State University, Prairie Band of Potawatomi Nation, Kansas
Beals, Charles Gregory, Oklahoma State University, Muscogee (Creek) Nation, Oklahoma
Beaver, Aaron Don, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Beaver, Allen Don, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Beck, Dustin Ryan, Oklahoma State University, Cherokee Nation, Oklahoma
Begay, Lisa, Arizona School of Dentistry, Navajo Nation, Arizona, New Mexico & Utah
Begay, Natalie, University of Washington, Pueblo of Santa Clara, New Mexico
Benally, Taleisa Morgan, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Bercier, Shellee, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Berger, Jessica Paulette, Montana State University, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana
Bernard, Kenneth Richard Lee, Harvard Medical School, Turtle Mountain Band of Chippewa Indians of North Dakota
Bighorse, Amanda Nicole, Oklahoma State University, Cherokee Nation, Oklahoma
Bissonette, Melvina Deneal, University of Minnesota, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Blackburn, Jimmy, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Blackburn, Nathon Allan, University of Alaska, Eskimo
Blackweasel, Mindona, Frontier School of Midwifery, Huslia Village
Blair, Earl Anthony, University of Wisconsin, White Earth Band, Minnesota Chippewa Tribe, Minnesota
Bost, Dekoda Kole, Oklahoma State University, Choctaw Nation of Oklahoma
Boswell, Dolly, University of Minnesota, White Earth Band, Minnesota Chippewa Tribe, Minnesota
Boyd, Cassandra Iva, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Brehmer, Jill Marie, University of Phoenix, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Brewer, Cristie Shon, Clackamas Community College, Cherokee Nation, Oklahoma
Brisbois, Leaha, Washington State University, Turtle Mountain Band of Chippewa Indians of North Dakota
Brown, Brady James, University of Washington, Cherokee Nation, Oklahoma
Brown, Shannon Ray, University of Denver, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Brown, Yvette Michelle, Arizona State University, Navajo Nation, Arizona, New Mexico & Utah
Brumley (Walker). Breanna Jo, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Brunk, Abby Gail, Northeastern State University, Cherokee Nation, Oklahoma
Burden-Greer, Katie Nicole, University of Oklahoma Health Sciences Center, Muscogee (Creek) Nation, Oklahoma
Calderon, Sophina Manheimer, University of Rochester, Navajo Nation, Arizona, New Mexico & Utah
Cartmill-Tebow, Molly Gean, Northeastern State University, Cherokee Nation, Oklahoma
Castillo, Asley Marie, University of Washington, Tohono O'Odham Nation of Arizona
Cavanaugh, Sarah, University of Mary, Spirit Lake Tribe, North Dakota
Clark, Chelsea Emma, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah
Clary, Zachary K., Oklahoma State University, Cherokee Nation, Oklahoma

Clay, Summer Lynn, Oklahoma Wesleyan University, Cherokee Nation, Oklahoma
Cleavenger, Aaron James, Everest College, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana
Cleavenger, Beth Ann, University of Montana, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana
Collins, Sara Jane, University of Oklahoma, Cherokee Nation, Oklahoma
Cook, David D., Rocky Vista University, Cherokee Nation, Oklahoma
Cook, Emily, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Cook, Raymond Natonabah, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Crawford, Brittany Dawn, University of North Dakota, Leech Lake Band, Minnesota Chippewa Tribe, Minnesota
Cummings, Samantha Joellen, Michigan State University, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Cuny, Ryan Wilson, University of Minnesota, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Curley, Dustin M., East Central University, Navajo Nation, Arizona, New Mexico & Utah
Curley-Moses, Tiffany Dawn, Northern Arizona University, San Carlos Apache Tribe of the San Carlos Reservation, Arizona
Dameron (Wallace), Roseann Marie, University of Oklahoma Health Sciences Center, Muscogee (Creek) Nation, Oklahoma
Dauphinais, Sara B., Augsburg College, Turtle Mountain Band of Chippewa Indians of North Dakota
Davis, Abby Sue, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Davis, Deidrea Rose, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah
Davis, Kayla Joyce, Boise State University, Bois Forte Band (Nett Lake), Minnesota Chippewa Tribe, Minnesota
De Vera, Melissa Myers, University of Nevada, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana
Debo, Erica Kristin, Southwestern Oklahoma State University, Choctaw Nation of Oklahoma
Debolt, Nicholas D., University of Oklahoma Health Sciences Center, Muscogee (Creek) Nation, Oklahoma
Decker-Walks Over Ice, Amber Victoria, University of Montana, Confederated Salish & Kootenai of the Flathead Reservation, Montana
Dez, Desiderio, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah
Dickson, Jamie Ruth, Salish Kootenai College, Navajo Nation, Arizona, New Mexico & Utah
Draper, Melanie B., Excela Health School of Anesthesia, Cherokee Nation, Oklahoma
Duncan, Caleb Jerome, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Duncan, Colette Renee, Simmons College, Choctaw Nation of Oklahoma
Enfield, Donna Estella, College of St. Catherine, Choctaw Nation of Oklahoma
English, Brittany Renee, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Enix, Jessica Lea, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Evans, Amanda Lorna, University of Montana, Confederated Salish & Kootenai of the Flathead Reservation, Montana
Evans, Crystalle M., Oklahoma State University, Cherokee Nation, Oklahoma
Fairbanks, Barbara Ann, College of Allied Health Sciences, White Earth Band, Minnesota Chippewa Tribe, Minnesota
Faram, Ronald Chad, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Fleming, Travis, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Flute, Trisha Marie, Northeast Community College, Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Foster, James Ray, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Fouty, Strohm Josefin, Southern Oregon University, Confederated Salish & Kootenai of the Flathead Reservation, Montana
Freeling, Katherine Jane, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Frizzell, Felicia, University of the Pacific, Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Gallagher, Shawna Fay, Wright Institute, Klamath Indian Tribe of Oregon
Garcia, Karen Gina, Kirksville College, Montgomery Creek, Pit River Tribe, California
Garland (Greenwood), Karen L., Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Garrison, Bijiibaa Kristin, Harvard Medical School, Navajo Nation, Arizona, New Mexico & Utah
Gates, Khrys W., University of Missouri, Cherokee Nation, Oklahoma
Gee, Jodi Leigh, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Giordano, Kristin, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Gipp, Chenoa R., University of North Dakota, Standing Rock Sioux Tribe of North & South Dakota
Gladden, Emily, Midwestern University, Navajo Nation, Arizona, New Mexico & Utah
Gower, Kari L., Northeastern State University, Cherokee Nation, Oklahoma
Gower, Shanon R., Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Graves, Katy Dean, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Gritts, Charity Catrina, Connors State College, Cherokee Nation, Oklahoma
Hatinger, Jodie Lee, Central Michigan University, Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Hatley, Jonathan M., Northeastern State University, Muscogee (Creek) Nation, Oklahoma
Hatton, Bobby Shane, East Central University, Chickasaw Nation of Oklahoma
Hayes, Teresa A, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Henry, David Edmond, Creighton University Dental School, Cherokee Nation, Oklahoma
Hernandez, Carmen Marie, Midwestern State University, Kiowa Indian Tribe of Oklahoma
Herron (Sherman), Lisa Renee, University of Minnesota, Leech Lake Band, Minnesota Chippewa Tribe, Minnesota
Heth (Taylor), Talara K., Connors State College, Cherokee Nation, Oklahoma
Hicks, Jaclyn Deann, Northeastern State University, Choctaw Nation of Oklahoma
Hill, Kyle Xavier, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Hinkle, Brian, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Howard, Audrey L., Connors State College, United Keetoowah Band of Cherokee Indians in Oklahoma
Huff, Zachary Wade, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Hunnicutt, Rita Ann, Oklahoma Baptist University, Citizen Potawatomi Nation, Oklahoma
Hunter, Rachael Renina, Argosy University at Phoenix, Navajo Nation, Arizona, New Mexico & Utah

Huyser, Michelle Ruth, University of Minnesota, Navajo Nation, Arizona, New Mexico & Utah
Ivanoff, Gussie Paniuq, University of Minnesota, Native Village of Unalakleet
Iyott, John Phillip, Alliant International University, Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Jackson, Todd Alan, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
James, Paree Denise, University of Alaska, Central Council of Tlingit & Haida Indian Tribes
Jaramillo, Ernest Benjamin, Central New Mexico Community College, Pueblo of Acoma, New Mexico
Jensen, Camilla Rae, A.T. Still University, Little Traverse Bay Bands of Odawa Indians, Michigan
Jensen, Emily, University of Notre Dame, Ninilchik Village
Jensen, Kelsey Nicole, Arizona State University, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Jim, Leroy, The Fielding Institute, Navajo Nation, Arizona, New Mexico & Utah
Johnson, Blakely Elizabeth, University of Oklahoma, Cherokee Nation, Oklahoma
Johnston, Kristen Denae, University of Oklahoma Health Sciences Center, Muscogee (Creek) Nation, Oklahoma
Jojola, Nicole, Northland Pioneer College, Hopi Tribe of Arizona
Jones, Carmen R., University of South Dakota, Choctaw Nation of Oklahoma
Kaiser, Morgan Lynn, North Dakota State University, White Earth Band, Minnesota Chippewa Tribe, Minnesota
Kangas, Louise Deray, University of Alaska, Native Village of Ruby
Kaye, Justin B., University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Keefee, Summer Leigh, Phoenix College, San Carlos Apache Tribe of the San Carlos Reservation, Arizona
Kettle, Keith C., D'Youville College, Seneca Nation of New York
Key, Cody Ryan, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
Kirk, Brant Evan, Oregon Health Sciences University, Klamath Indian Tribe of Oregon
Knight, Krysten Amber, Oklahoma Wesleyan University, Cherokee Nation, Oklahoma
Knight-Brown, Miranda Dawn, University of Minnesota, Cherokee Nation, Oklahoma
Kurley, Stanley, A.T. Still University, White Mountain Apache of the Fort Apache Reservation, Arizona
Lafernier, Susan Marie, Gogebic Community College, Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Lamb, Bianca Irene, Texas A&M University, Lipan Apache Tribe of Texas (State-Recognized)
Landgren, Shanna Rachelle, University of North Dakota, Bois Forte Band, Minnesota Chippewa Tribe, Minnesota
Lane, Dakotah C., Cornell University Medical College, Lummi Tribe of the Lummi Reservation, Washington
Laurence, Kami Lynn, University of Colorado, Navajo Nation, Arizona, New Mexico & Utah
Lawrence, Lindee M., Black Hills State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Lee, Christa Nicole, Arizona State University, Navajo Nation, Arizona, New Mexico & Utah
LeMaster, Robbi Lynn, University of Iowa, Santee Sioux Tribe of the Santee Reservation of Nebraska
Lenoir, Nicole Lynn, University of Minnesota, Turtle Mountain Band of Chippewa Indians of North Dakota
Lerche, Kathryn Addie, Michigan Technological University, Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Lile, Luke Alexander, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma
Little, Dustin Leroy, Oklahoma State University, Seminole Nation of Oklahoma
Livingston, Carole Ann, Argosy University, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Longhurst, William D., University of North Dakota, Navajo Nation, Arizona, New Mexico & Utah
Love, Socia Nicole, University of Minnesota, Cherokee Nation, Oklahoma
Lunday, Laramie Vernon, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Lynch, Samantha, University of Oregon, Confederated Tribes of the Siletz Reservation, Oregon
Maddox, Gregory John, Cornell University Medical College, Choctaw Nation of Oklahoma
Maleport, Marcy Marlene, Lake Superior State College, Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Marquis, Stacie, Lourdes College, Citizen Potawatomi Nation, Oklahoma
Marvel, Lindsey, Indiana University Bloomington, Caddo Indian Tribe of Oklahoma
Mason, Caley, University of Montana, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Massie, Alissa Louise, Arcadia University, Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Matlock, Jazmin, Oklahoma State University, Cherokee Nation, Oklahoma
Matthews, William Burt Lewis, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Mayahi, Naseam, University of Nevada, Seminole Nation of Oklahoma
Mayo, Joshua Allen, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma
McCorkle, Cody W., University of Minnesota, Citizen Potawatomi Nation, Oklahoma
McCoy, Jalissa Alexandria, University of Tulsa, Muscogee (Creek) Nation, Oklahoma
McDonald, Kathryn Elizabeth, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah
McEvoy, Kathryn Ann, University of North Dakota, Cherokee Nation, Oklahoma
Meeks, Kayla, University of Oklahoma Health Sciences Center, Chickasaw Nation, Oklahoma
Mesteth, Connally (Connie) Marie, University of Colorado Health Sciences Center, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Middleton, Kelly Diane, University of Alabama, Choctaw Nation of Oklahoma
Miles, Rachelle Ranee, University of South Dakota, Navajo Nation, Arizona, New Mexico & Utah
Mode-Hall, Jessica Lois, Harding University, Choctaw Nation of Oklahoma
Morin, Christina Mae, Minot State University, Turtle Mountain Band of Chippewa Indians of North Dakota
Mowrey, Sara Ann, University of Oklahoma Health Sciences Center, Muscogee (Creek) Nation, Oklahoma
Mulanax, Jamie Lynn, Kansas City University of Medicine & Biosciences, Citizen Potawatomi Nation, Oklahoma
Nelson, Joseph Jake, Central Washington University, Confederated Tribes and Bands of the Yakama Nation, Washington
Nelson, Tiara Novelle, Minnesota State University, Red Lake Band of Chippewa Indians, Minnesota
Newbrough, Deidra Dawn, Colorado State University Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Nez, Terilyn Melinda, Northcentral Technical College, Navajo Nation, Arizona, New Mexico & Utah

Norris, Valeria, University of North Dakota, Red Lake Band of Chippewa Indians, Minnesota
Not Afraid, Rosebud Faith, Sheridan College, Crow Tribe of Montana
O'Brien, Nancy Sue, Arizona State University, Cherokee Nation, Oklahoma
Old Elk, Chelsey Dionne, University of Montana, Crow Tribe of Montana
Oldacre, Matt Lance, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Ostgard, Estelle Anne, University of South Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Padon, Bradelle, University of Washington, Central Council of the Tlingit & Haida Indian Tribes
Paul, Patsy A., Gateway Community College, Navajo Nation, Arizona, New Mexico & Utah
Peltier, Luke Joseph, North Dakota State University, Turtle Mountain Band of Chippewa Indians of North Dakota
Peshlakai, Karshira Fallon, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Peterson-Horn, Tara Jo, Montana State University, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Platero, Miriam, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah
Poitra, Berry James, North Dakota State University, Turtle Mountain Band of Chippewa Indians of North Dakota
Poole, Annemarie Katherine, Bemidji State University, Cheyenne-Arapaho Tribes of Oklahoma
Poorbuffalo, Shanna, East Central University, Choctaw Nation of Oklahoma
Porter, Billy Garrison, East Central University, Seminole Nation of Oklahoma
Porter, Rachael Kristin, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Punneo, Amanda Paige, East Central University, Chickasaw Nation, Oklahoma
Quam, Zellisha Alexis, Arizona School of Dentistry, Zuni Tribe of the Zuni Reservation, New Mexico
Rangel, Tammy Ann, Paris Junior College, Choctaw Nation of Oklahoma
Redwine, Frederick Martin, University of North Dakota, Choctaw Nation of Oklahoma
Redwing, Courtney Allison, North Dakota State University, Sisseton-Wahpeton Sioux Tribe of the Lake traverse Reservation, South Dakota
Reece, Matthew Glenn, Northeastern State University, Cherokee Nation, Oklahoma
Reinke, Sarah J., ITT Technical Institute, Muscogee (Creek) Nation, Oklahoma
Richardson, Fain Justin, Marquette University, Iowa Tribe of Kansas & Nebraska
Richardson, Patricia Chrystine, University of North Dakota, Cherokee Nation, Oklahoma
Robinson, Riesa Lynne, University of Massachusetts, Hopi Tribe of Arizona
Roecker, Whitney Ellen, University of Arkansas, Cherokee Nation, Oklahoma
Rogers, Kyle, University of Oklahoma, Choctaw Nation of Oklahoma
Roselius, Kassi, University of North Dakota, Citizen Potawatomi Nation, Oklahoma
Ross, Royleen J., University of New Mexico, Pueblo of Laguna, New Mexico
Rumsey, Matthew C., University of North Dakota, Osage Tribe, Oklahoma
Running Hawk, Lacey Marie, University of Minnesota, Standing Rock Sioux Tribe of North & South Dakota
Saltclah, Shannon Marie, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Sampson, Annette New Dawn, Blue Mountain Community College, Confederated Tribes of the Umatilla Reservation, Oregon
Sandoval, Adrian Kyle, Creighton University, Navajo Nation, Arizona, New Mexico & Utah
Scantlen, Marty R., University of Oklahoma Health Sciences Center, Kiowa Indian Tribe of Oklahoma
Scheurer, Mallory, University of Arkansas, Cherokee Nation, Oklahoma
Schlotthauer, Rachael Joy, Loma Linda University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Schossow, Melissa Sue, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah
Schultheiss, Lindsey B., Hardin-Simmons University, Cherokee Nation, Oklahoma
Schulze, Rachel Larae, University of Montana, Pawnee Nation of Oklahoma
Selzler, Makayla Ann., South Dakota State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Seyler, Kevin Allen, George Fox University, Confederated Tribes of the Warm Springs Reservation of Oregon
Shadaram, Sara Roya, University of Oklahoma Health Sciences Center, Cheyenne-Arapaho Tribes of Oklahoma
Shaughnessy, Catherine Faith, Alliant International University, Muscogee (Creek) Nation, Oklahoma
Shirleson, Jamie Ruth Morgan, Arizona State University, Navajo Nation, Arizona, New Mexico & Utah
Shirley, Jeremy, Arizona State University, Navajo Nation, Arizona, New Mexico & Utah
Short, Kayleigh Ann, Arizona School of Dentistry, Petersburg Indian Association
Shoup, Deanna Michelle, University of Minnesota, Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Silversmith, Lenora Rose, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Skan, Jordan Dewey, University of Alaska, Ketchikan Indian Corporation
Slate, Megan, Northeastern State University, Cherokee Nation, Oklahoma
Slater, Matthew Ruhmann, Lake Erie College of Osteopathic Medicine, Cherokee Nation, Oklahoma
Smith, Rebecca J., University of North Dakota, Spirit Lake Tribe, North Dakota
Smith, Samantha Jenny, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Smith, Tanya R., Salish Kootenai College, Apache Tribe of Oklahoma
Sneed, Roberta V., Southwestern Community College, Eastern Band of Cherokee Indians of North Carolina
Sparks, Aaron D., University of Montana, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Spaulding, Timothy Daniel, University of Pittsburgh Dental School, Caddo Indian Tribe of Oklahoma
St. Goddard, Marcia Lynn, University of Montana, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
St. Clair, Sunny Rae, Montana State University, Shoshone Tribe of the Wind River Reservation, Wyoming
Stamile, Zachary Peter, University of Oklahoma Health Sciences Center, Chickasaw Nation, Oklahoma
Stimson, Danielle Rain, University of Washington, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Sun Rhodes, Lisa Sky, University of Washington, Arapahoe Tribe of the Wind River Reservation, Wyoming
Tabor, Aaron Austin, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Tarbell, Stephen Charles, University of Buffalo, St. Regis Band of Mohawk Indians of New York
Taylor, Tara Lynn, Lewis and Clark State College, Nez Perce Tribe of Idaho
Thuen, Bobbi Rae, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota
Tincher, Amber Nicole, University of North Dakota, Assiniboine & Sioux

Tribes of the Fort Peck Indian Reservation, Montana
Tom, Michelle, Nova Southeastern University, Navajo Nation, Arizona, New Mexico & Utah
Tomosie, Pearlyn G., University of North Dakota, Hopi Tribe of Arizona
Tsabetsaye, Jessica Lucillia, University of St. Francis, Zuni Tribe of the Zuni Reservation, New Mexico
Tso, Jacqueline, Northland Pioneer College, Navajo Nation, Arizona, New Mexico & Utah
Tsosie, Cynthia, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah
Tuamoheloa, Melanie Lynn, Creighton University, Omaha Tribe of Nebraska
Turner, Stephen Matthew, University of Minnesota, White Earth Band, Minnesota Chippewa Tribe, Minnesota
Velez, Marti Sue, Forest Institute of Professional Psychology, Cherokee Nation, Oklahoma
Waatsa, Robert Keith, Western New Mexico University, Zuni Tribe of the Zuni Reservation, New Mexico
Wahpepah, Kristin Renee, Langston University, Kickapoo Tribe of Oklahoma
Waite, Jeremy, Idaho State University, Nunapitchuk Native Village
Walker, John David, Creighton University, Zuni Tribe of the Zuni Reservation, New Mexico
Walker, Krystina, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma
Walker, Marshall, Pennsylvania College of Optometry, Cherokee Nation, Oklahoma
Walker, Tyson, University of California, White Mountain Apache of the Fort Apache Reservation, Arizona
Warwick, Rochelle L., University of Wisconsin, Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Waseta, Shawn Ray, Central New Mexico Community College, Zuni Tribe of the Zuni Reservation, New Mexico
Welch, Leeann Sue, Arizona School of Dentistry, Central Council of Tlingit & Haida Indian Tribes
Welsh, Dale William, University of Utah, Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Westlake, Julianne Camille, Gonzaga University, Native Village of Kiana
White, Kristin Rae, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah
Whitehair, Lance, University of Minnesota, Navajo Nation, Arizona, New Mexico & Utah
Whitener, Henry Jake, Northeastern State University, United Keetoowah Band of Cherokee Indians in Oklahoma
Wilbourn, Crystal, University of Arkansas, Cherokee Nation, Oklahoma
Wilch-Tweten, Saundra Whitney Madeline, University of South Dakota, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Willie, Crystal Amber, Creighton University, Navajo Nation, Arizona, New Mexico & Utah
Wilmon, Brey, Northeastern State University, Cherokee Nation, Oklahoma
Wilson, Hailey LaFrance, University of Washington, Nez Perce Tribe of Idaho
Wilson, Megan Breffney, Oklahoma State University, Muscogee (Creek) Nation, Oklahoma
Yasana, Lillian Jessica, University of Nevada, Klamath Indian Tribe of Oregon
Yazzie, Marla Jana, University of Arizona, Navajo Nation, Arizona, New Mexico & Utah

FOR FURTHER INFORMATION CONTACT: The Indian Health Service Scholarship Branch, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, or *Telephone:* (301) 443–6197, *Fax:* (301) 443–6048.

Dated: February 14, 2011.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2011–4665 Filed 3–1–11; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Generic Submission of Technology Transfer Center (TTC) External Customer Satisfaction Surveys (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 23, 2010 (75 FR 80830) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Generic Submission of Technology Transfer Center (TTC) External Customer Satisfaction Surveys (NCI). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of these web-based surveys are to: obtain information on the satisfaction of TTC's external customers with TTC customer services; collect information of preferred and expected communications channels of TTC's external customers; and assess the strategic direction of companies engaging in collaborations and alliances with the NIH. The needs of external technology transfer customers and stakeholders have never been assessed systematically. Input from these groups is essential for defining workflow process improvements for services provided by the NCI TTC to the research community. The results will be used to strengthen the operations of the NCI TTC, including the Competitive Service Center. This questionnaire adheres to The Public Health Service Act, Section 413 (42 USC 285a–2) which authorizes the Director of the National Cancer Institute in carrying out the National Cancer Program to "encourage and coordinate cancer research by industrial concerns where such concerns evidence a particular capability for such research;" *Frequency of Response:* Once. *Affected Public:* Private Sector. *Type of Respondents:* Managers, Executives and Directors from Foundations, Not-for-Profit and For-profit organizations that conduct research and development in biomedical applications. The three year reporting burden is estimated in Table 1, as is a standard request for generic submissions. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATES OF BURDEN HOURS OVER THREE YEARS (GENERIC SUBMISSION)

Type of respondents	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual hour burden
Managers, Executives, and Directors	4,000	1	20/60 (0.33)	1,333

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact John D. Hewes, Ph.D., Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute, 6120 Executive Blvd., MSC 7181, Suite 450, Rockville, MD 20852 or call non-toll-free number 301–435–3121 or e-mail your request, including your address to: *hewesj@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: February 17, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison Office, National Institutes of Health.

[FR Doc. 2011–4600 Filed 3–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: April 7–8, 2011.

Time: April 7, 2011, 8:30 a.m. to 3:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Conference Room 2C116, Bethesda, MD 20892.

Time: April 8, 2011, 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate to review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Conference Room 2C116, Bethesda, MD 20892.

Contact Person:

IRA W. LEVIN, PhD, Director, Division of Intramural Research, National Institute of Diabetes and Digestive, and Kidney Diseases, NIH, Bethesda, MD 20892, 301–496–6844. *iwl@helix.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 24, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4626 Filed 3–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; 2011 LRP Panel 1.

Date: March 18, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Maryline Laude-Sharp, PhD, Scientific Review Officer, National Institute on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 451–9536, *mlaudesharp@mail.nih.gov.*

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; 2011 LRP Panel 2.
Date: March 30, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6706 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting)
Contact Person: Maryline Laude-Sharp, PhD, Scientific Review Officer, National Institute on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 451–9536, *mlaudesharp@mail.nih.gov.*

Dated: February 24, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4637 Filed 3–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; R01 grant review (03).
Date: March 7, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call)
Contact Person: Maryline Laude-Sharp, PhD, Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 451–9536, *mlaudesharp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: February 24, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4636 Filed 3–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; New Tools for Characterizing Personal Environments.
Date: March 22–23, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Virtual Meeting)
Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Novel Biomarkers of Environmental Stressor Response.
Date: March 24–25, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Virtual Meeting)
Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 23, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4635 Filed 3–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular and Autoimmune Disease Genetics.
Date: March 9, 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: Cheryl M Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Muscular Rehabilitation.
Date: March 11, 2011.
Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–225: Program Project: Developing EPR Methodologies.

Date: March 16–18, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 130 E. Seneca Street, Ithaca, NY 14850.

Contact Person: Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Language and Communication Special Review.

Date: March 16, 2011.

Time: 3 p.m. to 4 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: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Skeletal Muscle and Exercise Physiology.

Date: March 17, 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: Richard Ingraham, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Complex Disease Genetics.

Date: March 17, 2011.

Time: 2:15 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: Cheryl M Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–266: Program Project: Phenix: New Methods for Automation in Macromolecular Crystallography.

Date: March 18, 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: Mike Radtke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Vaccines Study Section.

Date: March 21, 2011.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–266: Program Project: Program in Virus Translational Control.

Date: March 23–24, 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: William A. Greenberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–266: Program Project: Mechanisms of RNA Folding.

Date: March 24–25, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: David R. Jollie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Global Infections Disease Training Program Review.

Date: March 25, 2011.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7843, Bethesda, MD 20892, 301–408–9164, *gerendad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Biomedical and Behavioral Public Health Research.

Date: March 29–30, 2011.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

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.*

(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: February 24, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4634 Filed 3–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases

Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, April

5, 2011, 1 p.m. to April 5, 2011, 3 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on February 23, 2011, 76 10042.

The meeting will be held on April 14, 2011 from 3 p.m. to 5 p.m. The meeting is closed to the public.

Dated: February 24, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4632 Filed 3–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Vitamin D Standardization Program

SUMMARY: The Office of Dietary Supplements (ODS) of the National Institutes of Health (NIH) is collaborating with the Centers for Disease Control and Prevention (CDC), the National Institute of Standards and Technology (NIST) and with national health surveys around the world to lead an international effort to study the differences and similarities in serum 25-hydroxyvitamin D [25(OH)D] distributions around the world. A key first step in that process is the standardization of the measurement results of serum 25(OH)D from the different health surveys to a higher-order method developed by NIST.

This program includes but is not limited to the creation of serum materials with values assigned by a reference method that can be used for calibration and trueness control by laboratories measuring 25(OH)D. These materials will be made available through the newly created CDC Vitamin D Standardization Coordinating Center (VDSCC). While the main focus of the Vitamin D Standardization Program is on standardizing measurements done in national health surveys, it also allows for participation of clinical, public health, research and commercial laboratories and commercial trade organizations in the standardization effort.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Rooney, Office of Dietary Supplements, National Institutes of Health, 6100 Executive Boulevard, Room 2B03, Bethesda, MD 20892–7523, *Phone:* 301–496–1508; *Fax:* 301–402–0420; *E-mail: rooneyc@mail.nih.gov.*

Dated: February 22, 2011.

Paul M. Coates,

Director, Office of Dietary Supplements, Office of the Director, National Institutes of Health.

[FR Doc. 2011–4603 Filed 3–1–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0017]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0003

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0003, Coast Guard Boating Accident Form (CG–3865).

Our ICR describe the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 2, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0017], to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *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.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to 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, US COAST GUARD, 2100 2ND ST SW. STOP 7101, WASHINGTON DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: 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 these ICRs should be granted based on the Collections 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 Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek an extension of approval for the Collections. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and

related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–0017], and must be received by May 2, 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–2011–0017], 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 your 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–2011–0017" 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–2011–0017" 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.

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).

Information Collection Requests.

1. *Title:* Coast Guard Boating Accident Form (CG–3865).

OMB Control Number: 1625–0003.

Summary: The Coast Guard Boating Accident Report form (CG–3865, OMB control number 1625–0003) is the data collection instrument that ensures compliance with the implementing regulations and Title 46 USC 6102(b) that requires the Secretary to collect, analyze and publish reports, information, and statistics on marine casualties.

Need: Title 46 USC 6102(a) requires a uniform marine casualty reporting system, with regulations prescribing casualties to be reported and the manner of reporting. The statute requires a State to compile and submit to the Secretary (delegated to the Coast Guard) reports, information, and statistics on casualties reported to the State. Implementing regulations are contained in Title 33, Code of Federal Regulations, SUBCHAPTER S—BOATING SAFETY, PART 173—VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING, Subpart C—Casualty and Accident Reporting and PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEMS, Subpart C—Casualty Reporting System Requirements, and Subpart D—State reports.

States are required to forward copies of the reports or electronically transmit accident report data to the Coast Guard within 30 days of their receipt of the report as prescribed by 33 CFR 174.121 (Forwarding of casualty or accident reports). The accident report data and statistical information obtained from the reports submitted by the State reporting authorities are used by the Coast Guard in the compilation of national recreational boating accident statistics.

Form: CG–3865.

Respondents: Federal regulations (33 CFR 173.55) require the operator of any uninspected vessel that is numbered or used for recreational purposes to submit an accident report to the State authority when:

(1) A person dies; or

(2) A person is injured and requires medical treatment beyond first aid; or

(3) Damage to the vessel and other property totals $2,000 or more, or there is a complete loss of the vessel; or

(4) A person disappears from the vessel under circumstances that indicate death or injury.

Frequency: On occasion.

Burden Estimate: The estimated burden is 2,500 hours a year.

Dated: January 28, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–4653 Filed 3–1–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0040]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Offshore Safety Advisory Committee. This Committee advises the Coast Guard on matters affecting the offshore industry.

DATES: Completed application forms should reach us on or before April 18, 2011.

ADDRESSES: Application forms are available for download on the Advisory Committee's website at *https://homeport.uscg.mil/nosac.* Look under *FAQ's, NOSAC Application, View Document.* You may also request an application form by writing Kevin Y. Pekarek, Alternate Designated Federal Officer (ADFO) of National Offshore Safety Advisory Committee, Commandant (CG–5222), *Attn:* Vessel and Facility Operations Standards, U.S. Coast Guard, 2100 Second Street, SW., STOP 7126, Washington, DC 20593–7126; or by calling (202) 372–1386; or by faxing (202) 372–1926; or by e-mailing to *Kevin.Y.Pekarek2@uscg.mil.* Also a copy of the application form, as well as this notice, is available in our online docket, USCG–2011–0040, at *http://www.regulations.gov.* Send your

completed application to Kevin Y. Pekarek, ADFO at the street address above.

FOR FURTHER INFORMATION CONTACT: Kevin Y. Pekarek, ADFO of National Offshore Safety Advisory Committee (NOSAC); telephone (202) 372–1386; fax (202) 372–1926; or e-mail at *Kevin.Y.Pekarek2@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Offshore Safety Advisory Committee (NOSAC) ("Committee") is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). It was established under authority of Title 6 U.S.C. section 451 and advises the Secretary of Homeland Security on matters affecting the offshore industry.

The Committee expects to meet at least 2 times a year as called for by its charter and normally meets in Houston, Texas or New Orleans, Louisiana. It may also meet for extraordinary purposes. NOSAC or its subcommittees may conduct telephonic meetings at other times throughout the year when necessary for specific tasking.

We will consider applications for the five positions that expired or became vacant on January 31, 2011. The positions are:

(a) One person representing enterprises specializing in the support, by offshore supply vessels or other vessels, of offshore mineral and oil operations including geophysical;

(b) One person representing safety and training related to offshore exploration and construction;

(c) One person representing companies engaged in the production of petroleum;

(d) One person representing environmental interests; and,

(e) One person representing enterprises specializing in offshore drilling.

To be eligible, applicants for all available positions should have expertise and/or knowledge and experience regarding the technology, equipment and techniques that are used or are being developed for use in the exploration for and the recovery of offshore mineral resources.

Registered lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Pub. L. 110–81, as amended) are not eligible to serve on Federal Advisory Committees. Each NOSAC Committee member serves for a term of three years. Members may be considered to serve consecutive terms. All members serve at their own expense and receive no salary or reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Coast Guard on gender and ethnic nondiscrimination, we encourage qualified men and women and members of all racial and ethnic groups to apply. The Coast Guard values diversity; all different characteristics and attributes of persons that enhance the mission of the Coast Guard.

If you are interested in applying to become a member of the Committee, send a completed application to Kevin Y. Pekarek, ADFO of NOSAC at Commandant (CG–5222)/NOSAC, U.S. Coast Guard, 2100 Second Street, SW., STOP 7126, Washington, DC 20593–7126. Applications must be received on or before April 18, 2011. Please do not complete the political affiliation portion of the application because all NOSAC 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–2011–0040) in the Search box, please do not post your applications on this site.

Dated: February 25, 2011.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2011–4647 Filed 3–1–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–15]

Notice of Submission of Proposed Information Collection to OMB County Data Record Project

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The County Data Record Project will acquire, assemble, standardize and summarize parcel data from 127 counties and 27 corresponding states that have received HUD funding. Parcel data is geographically referenced information about the ownership, rights and interests of land parcels and HUD is specifically interested in parcel data related to tax assessment, property sale, easement, lien, land use and condition.

The objectives of the project are to:

- Create a standardized database that can be used by HUD; and
- Assess the feasibility of future collection activities.

DATES: *Comments Due Date:* April 1, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: County Data Record Project.

OMB Approval Number: 2528–Pending.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The County Data Record Project will acquire, assemble, standardize and summarize parcel data from 127 counties and 27 corresponding states that have received HUD funding. Parcel data is geographically referenced information about the ownership, rights and interests of land parcels and HUD is specifically interested in parcel data related to tax assessment, property sale, easement, lien, land use and condition.

The objectives of the project are to:

- Create a standardized database that can be used by HUD; and
- Assess the feasibility of future collection activities.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	562	0.199		1.375	....	154

Total Estimated Burden Hours: 153.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 23, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–4564 Filed 3–1–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–14]

Notice of Submission of Proposed Information Collection to OMB Family Unification Program (FUP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application for the Family Unification Program: Makes Housing Choice Vouchers available to eligible families to promote family reunification. Youths 18 to 21 who left foster care at age 16 or older are also eligible to receive assistance under the program for a maximum of 18 months. Eligible applicants are Public Housing Agencies, who must work with a Public Child Welfare Agency to identify and assist FUP voucher recipients. Information collected will be used to evaluate applications and award grants through the HUD SuperNOFA process.

DATES: *Comments Due Date: April 1, 2011*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0259) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Family Unification Program (Fup).

OMB Approval Number: 2577–0259.

Form Numbers: HUD 96011, SF–424, HUD 52515, HUD–27061, HUD 2994–A, SFLLL, HUD 2993, HUD–2880, HUD–2990, HUD 50058.

Description of the Need for the Information and its Proposed Use: Application for the Family Unification Program: makes Housing Choice Vouchers available to eligible families to promote family reunification. Youths 18 to 21 who left foster care at age 16 or older are also eligible to receive assistance under the program for a maximum of 18 months. Eligible applicants are Public Housing Agencies, who must work with a Public Child Welfare Agency to identify and assist FUP voucher recipients. Information collected will be used to evaluate applications and award grants through the HUD SuperNOFA process.

Frequency of Submission: Annually, Other one-time application.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	265	23.026		0.0434		265

Total Estimated Burden Hours: 265.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 23, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–4565 Filed 3–1–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)

Cancellation of Oil and Gas Lease Sale 219 in the Cook Inlet Planning Area on the Outer Continental Shelf (OCS)

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: Cancellation of Cook Inlet Lease Sale 219.

SUMMARY: The Department of the Interior has decided to cancel Cook Inlet Sale 219 that is scheduled to occur in the Revised Program for 2007–2012. Cancellation of Sale 219 due to lack of interest is necessary to allow sufficient time to gather new baseline data for environmental review, analysis, and identification of mitigating measures. The time will also be used to further develop and implement measures to improve the safety of oil and gas development in Federal waters.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Orr, BOEMRE, Chief, Leasing Division, at (703) 787–1215 or *renee.orr@boemre.gov.*

Dated: January 25, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2011–4615 Filed 3–1–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2011–N037; 94300–1122–0000–Z2]

RIN 1018–AX45

Fisheries and Habitat Conservation and Migratory Birds Programs; Draft Land-Based Wind Energy Guidelines; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), published a notice in the **Federal Register** on February 18, 2011, announcing the availability for public comment of draft Land-Based Wind Energy Guidelines (Guidelines). We are issuing a correction to that notice because we believe it gave the erroneous impression the draft Guidelines are ready for public use. However, our intention was for the notice to only announce the availability of draft Guidelines for public comment. We will publish the final Guidelines for public use after consideration of any comments received. We hereby amend the **SUMMARY** and **DATES** captions to clarify our intention.

DATES: This correction is effective March 2, 2011.

FOR FURTHER INFORMATION CONTACT: Christy Johnson-Hughes, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–1922. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

We published a notice in the **Federal Register** on February 18, 2011 (76 FR 9590), announcing the availability for public comment of draft Guidelines. The document contained some incorrect statements in the **SUMMARY** and **DATES** captions. We regret any confusion they may have caused.

The **SUMMARY** caption included this sentence: "These draft Guidelines are intended to supersede the Service's 2003 voluntary, interim guidelines for land-based wind development." In addition, the **DATES** caption indicated that the draft Guidelines would be effective February 18, 2011. However, the draft Guidelines we made available on February 18 are a draft version and not final. They do not supersede the Service's 2003 Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines (Interim Guidance).

As stated in the notice, the comment period on the draft Guidelines will close May 19, 2011. We expect to issue final Guidelines for public use after consideration of any public comments received. The final Guidelines will become effective after publication of a notice of availability in the **Federal Register** and will supersede the Interim Guidance.

Correction

In the **Federal Register** of February 18, 2011, in FR Doc. 2011–3699, on page 9590, in the first and second columns, correct the **SUMMARY** and **DATES** captions to read as follows:

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability for public comment of draft Land-Based Wind Energy Guidelines (Guidelines). These draft Guidelines do not supersede the Service's 2003 Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines. We expect to issue final Guidelines for public use after consideration of any public comments received. The final Guidelines will become effective after publication of a notice of availability in the **Federal Register**. The final Guidelines will supersede the Service's 2003 Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines.

DATES: We must receive any comments or suggestions on the draft Guidelines by the end of the day on May 19, 2011.

Dated: February 24, 2011.

Jeffrey L. Underwood,

Deputy Assistant Director, Fisheries and Habitat Conservation.

[FR Doc. 2011–4611 Filed 3–1–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L16400000.PH0000 LXSS006F0000 261A; 11–08807; MO# 4500020151; TAS: 14X1109]

Notice of Public Meetings: Northeastern Great Basin Resource Advisory Council, Nevada

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) the

Northeastern Great Basin Resource Advisory Council (RAC) will meet in various locations in Nevada. The meetings are open to the public.

DATES: March 23, 2011, at the BLM Ely District Office, 702 N. Industrial Way, Ely, Nevada; June 15 and 16, at the BLM Elko District Office, 3900 E. Idaho St., Elko, Nevada; August 25 and 26 at the Eureka Opera House, 31 S. Main Street, Eureka, Nevada. The meetings will include a general public comment period that will be listed in the final meeting agendas that will be available two weeks prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Schirete Zick, (775) 635–4067, *E-mail: szick@blm.gov.*

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 Nevada. Topics for discussion will include, but are not limited to: District Manager's reports on current program of work, Southern Nevada Public Land Management Act Round 12 review of proposals, the National Landscape Conservation System, wild horse and burro, wild lands designation, minerals/energy, recreation, the Seven Mile project, landscape scale restoration, riparian grazing management, and other topics that may be raised by RAC members. Two field trips will be held: Spruce Mountain grazing allotment on June 15 and the Seven Mile project on August 25.

The final agenda with any additions/corrections to agenda topics, location, and meeting times will be posted on the BLM Web site at: *http://www.blm.gov/nv/st/en/res/resource_advisory.html,* and will be sent to the media at least 14 days before the meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, should contact Schirete Zick at 775–635–4067 no later than one week before the start of each meeting.

Dated: February 17, 2011.

Doug Furtado,

Battle Mountain District Manager (RAC Designated Federal Official).

[FR Doc. 2011–4598 Filed 3–1–11; 8:45 am]

BILLING CODE 4310–HC–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 January 29, 2011. 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 March 17, 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.

Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Pima County

Wright, Harold Bell, Estates, Roughly bounded by N Wilmot Rd on the W, E Speedway Blvd on N, El Dorado Hills subdivision on the E, Tucson, 11000082

GEORGIA

Catoosa County

Ringgold Gap Battlefield, (Chickamauga-Chattanooga Civil War-Related Sites in Georgia and Tennessee MPS) White Oak Mountain, E of Ringgold and N of I75, and the NE face of Taylor Ridge S of I75, Ringgold, 11000079

OKLAHOMA

Oklahoma County

First Christian Church Historic District, 3700 N Walker Ave, Oklahoma City, 11000081

Tulsa County

Cities Service Station #8, (Route 66 and Associated Resources in Oklahoma AD MPS) 1648 SW Boulevard, Tulsa, 11000080

OREGON

Marion County

Adams, Louis J., House, (Silverton, Oregon, and Its Environs MPS) 423 W Main St, Silverton, 11000076

DeGuire, Murton E. and Lillian, House, (Silverton, Oregon, and Its Environs MPS) 631 B St, Silverton, 11000077

Drake, June D., House, (Silverton, Oregon, and Its Environs MPS) 409 S Water St, Silverton, 11000078

SOUTH DAKOTA

Charles Mix County

Henry Cool Park, 1/2 mi N of intersection of HWY 50 and 365th Ave, Platte, 11000083

TENNESSEE

Greene County

Allen—Birdwell Farm, (Transformation of the Nolichucky Valley MPS) 3005 W Allen's Bridge Rd, Greeneville, 11000088

Putnam County

John's Place, 11 Gibson Ave, Cookeville, 11000085

Roane County

Tennessee Highway Patrol Building (Boundary Increase), Nelson St and US 70 (Gateway), Rockwood, 11000086

TENNESSEE

Union County

Hamilton—Law Store, Intersection of Mill Pond Hollow Rd and Walkers Ford Rd, Maynardsville, 11000084

Williamson County

WSM Radio Transmission Complex, 8012 Concord Rd, Brentwood, 11000087

[FR Doc. 2011–4667 Filed 3–1–11; 8:45 am]

BILLING CODE 4312–51–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 January 15, 2011. 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 March 17, 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.

Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

La Paz County

Hi Jolly Monument,
(Pyramidal Monuments in Arizona MPS)
N end of Cemetery Rd,
Quartzsite, 11000054

DISTRICT OF COLUMBIA

District of Columbia

Peirce—Klingle Mansion (Boundary Increase),
3545 Williamsburg Ln N.W.,
Washington, 11000071

HAWAII

Hawaii County

Henderson, Walter Irving and Jean, House,
(Halaulani Place, 1917–1960 MPS)
82 Halaulani Place,
Hilo, 11000057
Lyman, Levi and Nettie, House,
(Halaulani Place, 1917–1960 MPS)
40 Halaulani Pl,
Hilo, 11000059
McGuinness, Patrick and Ethel, House,
(Halaulani Place, 1917–1960 MPS)
30 Halaulani Pl,
Hilo, 11000061
Moses, Edward H. and Claire, House,
(Halaulani Place, 1917–1960 MPS)
105 Halaulani Pl,
Hilo, 11000056
Parker, James and Catherine, House,
(Halaulani Place, 1917–1960 MPS)
72 Halaulani Pl,
Hilo, 11000058
Truslow, Herbert Austin, House,
(Halaulani Place, 1917–1960 MPS)
52 Halaulani Pl,
Hilo, 11000060
Hill, W.H., House,
(Halaulani Place, 1917–1960 MPS)
91 Halaulani Place,
Hilo, 11000055

ILLINOIS

Cook County

Greeley, Dr. Paul W. and Eunice, House,
545 Oak St,
Winnetka, 11000048

IOWA

Adair County

Hotel Greenfield,
110 E Iowa St,
Greenfield, 11000050

Dubuque County

Schroeder—Klein Grocery Company Warehouse,
(Dubuque, Iowa MPS)
40–48 Main St,
Dubuque, 11000051
Washington Street and East 22nd Street Historic District,
(Dubuque, Iowa MPS)
2162–2255 Washington St and E 22nd St,
Dubuque, 11000052

Woodbury County

Grandview Park Music Pavilion,
Sits to the E of McDonald St—Entrance in 2600 block of McDonald St,
Sioux City, 11000053

MASSACHUSETTS

Worcester County

Hadley Furniture Company Building,
651–659 Main St,
Worcester, 11000068
West Brick School,
1592 Old Turnpike Rd,
Oakham, 11000070

MINNESOTA

Middlesex County

Grace Universalist Church,
44 Princeton Boulevard,
Lowell, 11000069

OREGON

Columbia County

Heimuller, John and Carolena, Farmstead,
32600 SW J.O. West Rd,
Scappoose, 11000049

VIRGINIA

Danville Independent City

Schoolfield Welfare Building,
917 W Main St,
Danville, 11000064

Frederick County

High Banks,
423 High Banks Rd,
Stephenson, 11000066

Grayson County

Spring Valley Rural Historic District,
Route 805; Route 604; Route 651 in the Spring Valley community,
Fries, 11000062

Loudoun County

Hibbs Bridge,
SR 734 6 mi NW of Aldie between Hibbs Bridge Rd (SR 731 W) to the S and Watermill Rd (SR 731 E) to the N,
Mountville, 11000067

Mathews County

Lane Hotel, The,
68 Church St,
Mathews, 11000065

Prince William County

Old Town Hall and School,
15025 Washington St,
Haymarket, 11000063

[FR Doc. 2011–4670 Filed 3–1–11; 8:45 am]

BILLING CODE 4312–51–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 January 22, 2011. Pursuant to §§ 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 March 17, 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.

Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

LOUISIANA

Orleans Parish

Straight University Boarding House and Dining Hall, 1423 N Claiborne Ave, New Orleans, 11000074

Ouachita Parish

Miller—Roy Building, 1001 Desiard St, Monroe, 11000075

Sabine Parish

Pleasant Hill Battlefield Historic District, Near junction of ST HWY 175 and 177, Pelican, 11000072

SOUTH CAROLINA

Beaufort County

Sams Tabby Complex (38BU581), (Historic Resources of St. Helena Island c. 1740-c. 1935 MPS) S end of Datha Island at Mink's Pt near Jenkins Cr, Frogmore, 11000073

[FR Doc. 2011–4671 Filed 3–1–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–313, 314, 317, and 379 (Third Review)]

Brass Sheet and Strip From France, Germany, Italy, and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on brass sheet and strip from France, Germany, Italy, and Japan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on brass sheet and strip from France, Germany, Italy, and Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is March 31, 2011. Comments on the adequacy of responses may be filed with the Commission by May 16, 2011. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* March 1, 2011.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–240, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On March 6, 1987, the Department of Commerce ("Commerce") issued antidumping duty orders on imports of brass sheet and strip from France, Germany, and Italy (52 FR 6995; Italy amended at 52 FR 11299 (April 8, 1987)). On August 12, 1988, Commerce issued an antidumping duty order on imports of brass sheet and strip from Japan (53 FR 30454). Following first five-year reviews by Commerce and the Commission, effective May 1, 2000, Commerce issued a continuation of the antidumping duty orders on imports of brass sheet and strip from France, Germany, Italy, and Japan (65 FR 25304). Following second five-year reviews by Commerce and the Commission, effective April 3, 2006, Commerce issued a continuation of the antidumping duty orders on imports of brass sheet and strip from France, Germany, Italy, and Japan (71 FR 16552). The Commission is now conducting third reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are France, Germany, Italy, and Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original antidumping duty determinations concerning brass sheet and strip from France, Germany, and Italy, the Commission defined the *Domestic Like Product* to include brass material to be rerolled (reroll) and finished brass sheet and strip (finished products). In its original antidumping duty determination and the remand determination concerning brass sheet and strip from Japan, the Commission defined the *Domestic Like Product* to be all Unified Numbering System ("UNS") C20000 domestically produced brass sheet and strip. One Commissioner defined the *Domestic Like Product* differently. In its full first and second five-year review determinations, the Commission defined the *Domestic Like Product* as all UNS C20000 series brass sheet and strip. For purposes of this notice, the *Domestic Like Product* is all UNS C20000 series brass sheet and strip.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original antidumping duty determinations concerning brass sheet and strip from France, Germany, and Italy, the Commission defined the *Domestic Industry* to include primary mills with casting capabilities and rerollers. In its original antidumping duty determination and the remand determination concerning brass sheet and strip from Japan, the Commission defined the *Domestic Industry* as producers of the corresponding *Domestic Like Product.* One Commissioner defined the *Domestic Industry* differently. In its full first and second five-year review determinations, the Commission defined the *Domestic Industry* to consist of the domestic producers of UNS C20000 series brass sheet and strip. For purposes of this notice, the *Domestic Industry* is all domestic producers of UNS C20000 series brass sheet and strip.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 31, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is May 16, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the

United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–4449 Filed 3–1–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–761]

In the Matter of Certain Set-Top Boxes, and Hardware and Software Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 24, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Microsoft Corporation. The complaint alleges violations of section 337 based upon the

importation into the United States, the sale for importation, and the sale within the United States after importation of certain set-top boxes, and hardware and software components thereof by reason of infringement of certain claims of U.S. Patent No. 5,585,838 ("the '838 patent"); U.S. Patent No. 5,731,844 ("the '844 patent"); U.S. Patent No. 6,028,604 ("the '604 patent"); and U.S. Patent No. 5,758,258 ("the '258 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 22, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain set-top boxes, and hardware and software components thereof that infringe one or more of claims 1 and 13 of the '838 patent; claims 1, 7, 11–15, and 21 of the '844 patent; claims 1, 2, 7–9, 14–16, and 19 of the '604 patent; and claims 1, 2, 3, 6, and 7 of the '258 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Microsoft Corporation, One Microsoft Way, Redmond, WA 98052.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: TiVo Inc., 2160 Gold Street, Alviso, CA 95002.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 23, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–4571 Filed 3–1–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–760]

In the Matter of Certain Liquid Crystal Display Devices, Products Containing Same, and Methods for Using the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 24, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sharp Corporation of Japan. Letters supplementing the complaint were filed on February 11 and February 14, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal display devices, products containing same, and methods for using the same by reason of infringement of certain claims of U.S. Patent No. 6,879,364 ("the '364 patent"); U.S. Patent No. 7,304,626 ("the '626 patent"); U.S. Patent No. 7,532,183 ("the '183 patent"); U.S. Patent No. 7,283,192 ("the '192 patent"); U.S. Patent No. 6,937,300 ("the '300 patent"); U.S. Patent No. 7,057,689 ("the '689 patent"); and U.S. Patent No. 7,838,881 ("the '881 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by

contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2767.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 22, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain liquid crystal display devices, products containing same, and methods for using the same that infringe one or more of claims 5–7 of the '364 patent; claims 10, 17, and 18 of the '626 patent; claims 1–6 of the '183 patent; claims 1 and 11 of the '192 patent; claim 1 of the '300 patent; claims 1–4, 6, 7, 9, 12, 16, 18, 21, 22, 24, 27, 31, and 33 of the '689 patent; and claims 1–7 and 10–13 of the "881 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Sharp Corporation, 22–22 Nagaike-cho, Abeno-ku, Osaka 545–8522, Japan.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

AU Optronics Corp., No. 1 Li-Hsin Road 2, Hsinchu Science Park, Hsinchu 300, Taiwan.

Au Optronics Corporation America, 9720 Cypresswood Drive, Suite 241, Houston, TX 77070.

BenQ America Corp., 15375 Barranca Parkway, Suite A–205, Irvine, CA 92618.

BenQ Corporation, 16 Jihu Road, Neihu, Taipei 114, Taiwan.

Haier America Trading LLC, 1356 Broadway, New York, NY 10018.

Haier Group Company, 1 Haier Road, Hi-Tech Zone, Qingdao 266101, China.

LG Electronics Inc., LG Twin Towers 20, Yoido-dong, Youngdungpo-gu, Seoul 150–721, Korea.

LG Electronics U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632.

SANYO Electric Co., Ltd., 5–5, Keihan-Hondori 2-chome, Moriguchi City, Osaka 570–8677, Japan.

SANYO North America Corporation, 2055 SANYO Avenue, San Diego, CA 92154.

TCL Corporation, TCL Industrial Tower, No. 6 South Eling Road, Huizhou, Guangdong Province 516001, China.

TTE Technology, Inc., d/b/a TCL America, 5541 West 74th Street, Indianapolis, IN 46268.

VIZIO, Inc., 39 Tesla, Irvine, CA 92618.

(c) The Commission investigative attorney, party to this investigation, is Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 24, 2011.

William R. Bishop,

Meetings and Hearings Coordinator.

[FR Doc. 2011–4585 Filed 3–1–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0035]

Agency Information Collection Activities; Existing Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Approval of a existing collection; The National Instant Criminal Background Check System (NICS) Point of Contact (POC) State Final Determination Electronic Submission.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division's NICS Section will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until May 2, 2011. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Sherry L. Kuneff, Management and Program Analyst, Federal Bureau of Investigation, Criminal Justice Information Services Division, National Instant Criminal Background Check System Section, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile at (304) 625–7540.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and

Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact Sherry L. Kuneff at the address or fax number listed in the paragraph above or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more 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 agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Approval of an Existing Collection.

(2) *Title of the Forms:* The National Instant Criminal Background Check system (NICS) Point of contact (POC) State Final Determination Electronic Submission.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0035.

Sponsor: Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: Full Point of Contact (POC) States, Partial POC States, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-qualified Alternate Permit States.

Brief Abstract: This collection is requested of Full Point of Contact (POC) States, Partial POC States, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-qualified Alternate Permit States. Per 28 Code of Federal Regulations, Section 25.6(h), POC States are required to transmit electronic determination messages to the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division's National Instant Criminal Background Check System (NICS) Section of the status of a firearm background check in those instances in which a transaction is "open" (transactions unresolved before the end of the operational day on which the transaction was initiated); "denied" transactions; transactions reported to the NICS as open and subsequently changed to proceed; and overturned denials. The State POC must communicate this response to the NICS immediately upon communicating their determination to the Federal Firearms Licensee or in those cases in which a response has not been communicated, no later than the end of the operational day in which the transaction was initiated. For those responses that are not received, the NICS will assume the transaction resulted in a "proceed."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

There are 21 POC States who are required to submit electronic notifications to the FBI CJIS Division's NICS Section and 18 ATF-qualified Alternate Permit States voluntarily submit electronic notifications to the FBI CJIS Division's NICS Section. Both POC States and ATF-qualified Permit States conduct an average of 5,313,445 transactions per year. It is estimated that 26 percent would be affected by this collection and would require electronic messages sent to the NICS. This translates to 1,381,496 transactions, which would be the total number of annual responses. The other 74 percent would not be reported in this collection. It is estimated it will require one minute (60 seconds) for each POC State to transmit the information per transaction to the NICS. Thus, it is estimated that collectively all respondents will spend 23,024 hours yearly submitting determinations to the NICS. If the number of transactions were distributed evenly among the POC States, then 590 hours would be the estimated time for each of the 39 states to respond. Record keeping time is part of the routine business process and is not part of this calculation.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The average yearly hour burden for submitting final determinations combined is: (5,313,445 total checks × 26 percent)/60 seconds = 23,024 hours.

If additional information is required, contact: Ms. Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: February 23, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–4451 Filed 3–1–11; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Comment Request for information Collection for Employment and Training (ET) Handbook 361, Unemployment Insurance (UI) Data Validation (DV) (OMB Control No. 1205–0431): Extension Without Change

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor (Department) 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)(2)(A)]. This program helps to ensure that the 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 Employment and Training Administration is soliciting comments concerning the collection of data about the Unemployment Insurance Data Validation program, for which collection authority expires on July 31, 2011.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 2, 2011.

ADDRESSES: Submit comments to Burman Skrable, Office of Unemployment Insurance, Employment and Training Administration, U.S. Department of Labor, Room S–4220, 200 Constitution Avenue, NW., Washington, DC 20210, *telephone:* 202–693–3197 (this is not a toll-free number), *fax:* 202–693–3975, *e-mail: skrable.burman@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. *Background:* Section 303(a)(6) of the Social Security Act specifies that the Secretary of Labor will not certify State UI programs to receive administrative grants unless the State's law includes provisions for—

> making of such reports * * * as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

The Department considers data validation one of those "provisions * * * necessary to assure the correctness and verification" of the reports it requires.

The Government Performance and Results Act of 1993 (GPRA) requires Federal agencies to develop annual and strategic performance plans that establish performance goals, have concrete indicators of the extent that goals are achieved, and set performance targets. Each year, the agency is to issue a report that "evaluate[s] the performance plan for the current fiscal year relative to the performance achieved toward the performance goals in the fiscal year covered by the report." Section 1116(d)(2) of OMB Circular A–11, which implements the GPRA process, cites the Reports Consolidation Act of 2000 to emphasize the need for data validation by requiring that the agency's annual performance report "contain an assessment of the completeness and reliability of the performance data included in it [that] * * * describes any material inadequacies in the completeness and reliability of the data." (OMB Circular A–11, Section 230.2(f)). The Administrations' agenda has also emphasized the importance of complete information for program monitoring and improving program results to enhance the management and performance of the Federal government.

The UI DV system is an extension of the Workload Validation (WV) program that all State Workforce Agencies were required to operate between the mid-1970s and 2000. The WV program checked the validity of 29 report elements on four required UI reports, because they are combined into the "workload items" used to apportion each State's share of funds appropriated for the administration of the UI program. The UI DV program employs a refined and automated version of WV's basic validation approach to review 322 elements reported on 13 benefits reports and one tax report. The Department uses many of these elements for key performance measures as well as for the original workload items. The validation process assesses the validity (accuracy) of the counts of transactions or measurements of status as follows. In the validation process, guided by a detailed handbook, the state first constructs extract files containing all pertinent individual transactions for the desired report period to be validated. These transactions are grouped into 15 benefits and five tax populations. Each transaction record contains the necessary characteristics or dimensions that enable it to be summed into an independent recount of what the state has already reported. The Department provides state agencies with software that edits the extract file (to identify and remove duplicate transactions and improperly built records, for example), then aggregates the transactions to produce an independent reconstruction or "validation count" of the reported figure. The reported count is considered valid by this "quantity" validation test if it is within ±2% of the validation count (±1% for a GPRA-related element).

The software also draws samples of most transaction types from the extract files. Guided by a state-specific handbook, the validators review these sample records against documentation in the state's management information system to determine whether the transactions in the extract file are supported by system documentation. This qualitative check determines whether the validation count can be trusted as accurate. The benefits extract files are considered to pass this "quality" review if random samples indicate that no more than 5% of the records contain errors; tax files are subjected to different but related tests. A reported count is considered valid only if it differs from a reconstructed (validation) count by no more than the appropriate criterion of ±2% or ±1%, and that validation count comes from an extract file that has satisfied all quality tests.

During FY 2011 and beyond, all states will be required to conduct a complete validation every three years. In three cases the three-year rule does not apply, and a revalidation must occur within one year: (1) Groups of reported counts that are summed for purposes of making a Pass/Fail determination and do not pass validation by being within ±2% of the reconstructed counts or the extract file does not pass all quality tests; (2) the validation applies to the two benefits populations and one tax population used for GPRA measures; and (3) reports are produced by new reporting software.

II. *Review Focus:* The Department of Labor 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions:

Title: Unemployment Insurance Data Validation Program.

OMB Number: 1205–0431.

Affected Public: State Workforce Agencies (SWAs).

Form: ET Handbook 361: Unemployment Insurance Data Validation Benefits and Tax (Issued as separate handbooks).

Total Annual Respondents: 53.

Annual Frequency: At least three validation items per state (two benefits populations and one tax population).

Total Annual Responses: Depends on number of validation items due; at least 53 x 3 = 159 per year.

Average Time per Response: 550 hours.

Estimated Total Annual Burden Hours: 29,150 hours.

Total Annual Burden Cost for Respondents: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter public record.

Dated: February 25, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–4648 Filed 3–1–11; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0055]

Steel Erection; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on Steel Erection (29 CFR part 1926, subpart R).

DATES: Comments must be submitted (postmarked, sent, or received) by May 2, 2011.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2011–0055, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection request (ICR) (OSHA–2011–0055). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments, *see* the "Public Participation" heading in the section of this notice titled "**SUPPLEMENTARY INFORMATION.**"

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Section 1926.752(a)(1). Description of the requirement. Based on the results of a specified method for testing field-cured samples, the controlling contractor must provide the steel erector with written notification that the concrete in the footings, piers, and walls, or the mortar in the masonry piers and walls, is at 75% of its minimum compressive-design strength or has sufficient strength to support loads imposed during steel erection. Note: This is not and will not be enforced for mortar in piers and walls until such time as OSHA is able to define an appropriate substitute or until an appropriate American Society for Testing and Materials (ASTM) test method is developed.

Sections 1926.752(a)(2) and 1926.755(b)(1). Description of the requirements. Under § 1926.752(a)(2), the controlling contractor, before it authorizes commencement of steel erection, must notify the steel erector in writing that any repairs, replacements, and modifications to anchor bolts (rods) have been made in accordance with § 1926.755(b)(1) which requires the controlling contractor to obtain approval from the project structural engineer of record for the repairs, replacements, and modifications.

Section 1926.753(c)(5). Description of the requirement. Employers must not deactivate safety latches on hooks or make them inoperable except for the situation when: A qualified rigger determines that it is safer to hoist and place purlins and single joists by doing so; or except when equivalent protection is provided in the site-specific erection plan.

Section 1926.753(e)(2). Description of the requirement. Employers must have the maximum capacity of the total multiple-lift rigging assembly, as well as each of its individual attachment points, certified by the manufacturer or a qualified rigger.

Sections 1926.755(b)(2) and 1926.755(b)(1). Description of the requirements. Under § 1926.755(b)(2), throughout steel erection the controlling contractor must notify the steel erector in writing of additional repairs, replacements, and modifications of anchor bolts (rods); § 1926.755(b)(1) requires that these repairs, replacements and modifications not be made without approval from the project structural engineer of record.

Section 1926.757(a)(4). Description of the requirement. If steel joists at or near columns span more than 60 feet, employers must set the joists in tandem with all bridging installed. However, the employer may use an alternative method of erection if a qualified person develops the alternative method, it provides equivalent stability, and the employer includes the method in the site-specific erection plan.

Section 1926.757(a)(7). Description of the requirement. Employers must not modify steel joists or steel joist girders in a way that affects their strength without the approval of the project structural engineer of record.

Sections 1926.757(a)(9) and 1926.758(g). Description of the requirements. An employer can use a steel joist, steel joist girder, purlin, or girt as an anchorage point for a fall-arrest system only with the written approval of a qualified person.

Section 1926.757(e)(4)(i). Description of the requirement. An employer must install and anchor all bridging on joists and attach all joist bearing ends before placing a bundle of decking on the joists, unless: A qualified person determines that the structure or portion of the structure is capable of supporting the bundle, the employer documents this determination in the site-specific erection plan and follows the additional requirements specified in § 1926.757(e)(4)(ii)–(vi).

Section 1926.760(e) and (e)(1). Description of the requirement. The steel erector can leave its fall protection at the jobsite after completion of the erection activity only if the controlling contractor or its authorized representative directs the steel erector to do so and inspects and accepts responsibility for the fall protection.

Section 1926.761. Description of the requirement. Employers must have qualified persons provide training to all workers exposed to fall hazards. This training is to include: Recognition of fall hazards at the worksite; use and operation of guardrail systems, personal fall-arrest systems, positioning-device systems, fall-restraint systems, safety-net systems, and other fall protection implemented at the worksite; correct procedures for erecting, maintaining, disassembling, and inspecting these fall-protection systems; procedures that prevent falls to lower levels, and through or into holes and openings in walking-working surfaces; and the fall-protection requirements of this Subpart. In addition, employers are to provide special training to workers engaged in multiple-lift rigging procedures (*i.e.,* to recognize multi-lift hazards and in the proper procedures and equipment to perform multiple lifts), connector procedures (*i.e.,* to identify connector hazards and in the requirements of §§ 1926.756(c) and 1926.760(b)), and controlled-decking-zone (CDZ) procedures (*i.e.,* knowledge of CDZ hazards and in the requirements of §§ 1926.754(e) and 1926.760(c)).

Paragraph (c)(4)(ii) of Appendix G to Subpart R. Description of the requirement. This mandatory appendix duplicates the regulatory requirements of § 1926.502 ("Fall protection systems criteria and practices"), notably the requirements specified in paragraph (c)(4)(ii). This paragraph addresses the certification of safety nets as an option available to employers who can demonstrate that performing a drop test on safety nets is unreasonable. This provision allows such employers to certify that their safety nets, including the installation of the nets, protect workers at least as well as safety nets that meet the drop-test criteria. The employer must complete the certification process prior to using the net for fall protection, and the certificate must include the following information: Identification of the net and the type of installation used for the net; the date the certifying party determined that the net and its installation would meet the drop-test criteria; and the signature of the party making this determination. The most recent certificate must be available at the jobsite for inspection.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Steel Erection (29 CFR part 1926, subpart R). The Agency is requesting an adjustment decrease of 7,414 burden hours (from 30,339 hours to 22,925 hours). This decrease is due to a decline in worksites associated with this subpart from 20,787 to 15,758.

Type of Review: Extension of a currently approved collection.

Title: Steel Erection (29 CFR part 1926, subpart R).

OMB Number: 1218–0241.

Affected Public: Business or other for-profits.

Number of Respondents: 15,758.

Frequency: On occasion.

Average Time per Response: Varies from one minute (.02 hour) for a controlling contractor to inform a steel erector to leave fall protection at the jobsite to three hours for controlling contractors to obtain approval from the project structural engineer of record before modifying anchor bolts.

Estimated Total Burden Hours: 22,925.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0055). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this

notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on February 25, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–4697 Filed 3–1–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. 2010–0046]

QPS Evaluation Services Inc.; Recognition as an NRTL

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision to grant recognition to QPS Evaluation Services Inc., as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: This recognition becomes effective on March 2, 2011 and will be valid until March 2, 2016, unless terminated or modified prior to that date in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110. For more information about the Nationally Recognized Testing Laboratory Program, go to *http://osha.gov* and select "N" in the site index.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of QPS Evaluation Services Inc., (QPS) as a Nationally Recognized Testing Laboratory (NRTL). The scope of this recognition includes testing and certification of the equipment and materials, and use of the supplemental program, listed below. OSHA will detail QPS's scope of recognition on an informational Web page for the NRTL, as further explained below.

OSHA recognition of an NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition, or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from OSHA's Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that has/have the technical capability to perform the product testing and certification activities for test standards within the NRTL's scope; and (3) the supplemental program(s) that the NRTL may use, each of which allows the NRTL to rely on other parties to perform activities necessary for product testing and certification.

QPS applied for recognition as an NRTL (*See* Ex. 2—QPS application dated 1/27/2006) [1] pursuant to 29 CFR 1910.7, and OSHA published the required preliminary notice in the **Federal Register** on November 18, 2010 (75 FR 70696) to announce the application. The notice included a preliminary finding that QPS could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by December 20, 2010. OSHA received no comments in response to the notice. OSHA now is proceeding with this final notice to grant QPS's recognition application.

All public documents pertaining to the QPS application are available for review by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2010–0046.

The current address of the laboratory facility (site) that OSHA recognizes for QPS is: QPS Evaluation Services Inc., 81 Kelfield Street, Unit 8, Toronto, Ontario, M9W 5A3, Canada.

General Background on the Application

According to the application, QPS was established in 1995 as a Canadian Standards Association field-inspection agency. In 1998, QPS performed technical services for Entela, Inc., an organization formerly recognized by OSHA as an NRTL, which another NRTL subsequently acquired. The application also states that QPS received accreditation by other well-known accreditors (*i.e.,* the Standards Council of Canada and the International Electrotechnical Commission Certification Body (IEC CB) Scheme).

QPS applied on January 27, 2006, for recognition of one site and a number of test standards. (*See* Ex. 2.) In response to OSHA's request for clarification, QPS amended its application to provide additional technical details, and then provided further details in a later update. (*See* Ex. 3—QPS amended application, dated 4/15/2008 and 11/30/2009.) OSHA's NRTL Program staff performed an on-site assessment of the QPS facility in April 2010. Based on this assessment, the OSHA staff recommended recognition of QPS in their on-site review report of the assessment. (*See* Ex. 4—OSHA on-site review report on QPS.)

Through its amended application information (*see* Ex. 3), QPS represented that it maintains the experience, expertise, personnel, organization, equipment, and facilities suitable for accreditation as an OSHA Nationally Recognized Testing Laboratory. It also represented that it meets, or will meet, the requirements for recognition defined in 29 CFR 1910.7.

OSHA addresses the four requirements for recognition (i.e., capability, control procedures, independence, and creditable reports and complaint handling) below, along with examples that illustrate how QPS meets each of these requirements. The applicant's summary addressing OSHA's evaluation criteria references

[1] A number of documents, or information within documents, described in this **Federal Register** notice are the applicant's internal, detailed procedures, or contain other confidential business or trade-secret information. These documents and information, designated by an "NA" at the end of, or within, the sentence or paragraph describing them, are not available to the public.

many, but not all, of the documents or processes described below (see the QPS basic information summary; hereafter, "Basic Summary," which is part of Ex. 3, portions of which are confidential).

Capability

Section 1910.7(b)(1) states that, for each specified item of equipment or material proposed for listing, labeling, or acceptance, the NRTL must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality-control programs) to perform appropriate testing. The "Capability" section of the Basic Summary (NA) shows that the applicant has security measures and detailed procedures in place to restrict or control access to its facility, to areas within its facility, and to confidential information. This section also states that QPS's facility has equipment for monitoring, controlling, and recording environmental conditions during tests. QPS provided a list of this equipment, which NRTL Program staff examined during the on-site review (Ex. 4, p. 1). This section shows that QPS has detailed procedures for handling test samples. In addition, the Basic Summary or documents it references show that the QPS facility has adequate test areas and energy sources, and procedures for controlling incompatible activities. QPS provided a detailed list of its testing equipment (NA), and OSHA's on-site review (Ex. 4, p. 2) confirmed that much of this equipment is in place. Review of the application shows that the equipment listed is available (NA) and adequate for the scope of testing described below.

The "Capability" section of the Basic Summary (NA) indicates that QPS has detailed procedures addressing the maintenance and calibration of equipment, as well as the types of records maintained for, or supporting, many laboratory activities. It also indicates that QPS has detailed procedures for conducting testing, review, and evaluation, and for capturing the test and other data required by the standard for which it seeks recognition. OSHA's on-site review (Ex. 4, p. 2) examined these test data and evaluation documents. QPS currently is using some of these procedures to test products for NRTLs. Further, this section indicates that QPS has detailed procedures for processing applications, and for developing new procedures.

The amended application (Ex. 3) contained adequate procedures to address training or qualifying staff for particular technical tasks (NA). The amended application indicates that QPS has sufficient qualified personnel to perform the proposed scope of testing based on their education, training, technical knowledge, and experience. OSHA's on-site review (Ex. 4, p. 3) confirmed many of these qualifications. The amended application provides evidence that QPS has an adequate quality-control system in place, and OSHA's on-site review (Ex. 4, p. 3) verified the performance of internal audits, and tracking and resolution of nonconformances.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide controls and services, to the extent necessary, for the particular equipment or material proposed for listing, labeling, or acceptance. These controls and services include procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The "Control Programs" section of the Basic Summary shows that QPS has the quality-control manual and detailed procedures to address the steps involved to list and certify products. QPS has a registered certification mark. In addition, the "Control Programs" section shows that the applicant has certification procedures (NA); these procedures address the authorization of certifications and audits of factory facilities. The audits apply to both the initial evaluations and the follow-up inspections of manufacturers' facilities. This section indicates that procedures also exist for authorizing the use of the certification mark, and the actions taken when QPS finds that the manufacturer is deviating from the certification requirements. Factory inspections will be a new activity for QPS, and OSHA will need to review the effectiveness of QPS's inspection program when it is in place. As a result, OSHA is proposing a condition to ensure that QPS conducts inspections properly, and at the frequency set forth in the applicable NRTL Program policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph III.A).

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers that are subject to the testing requirements, and of any manufacturers or vendors of equipment or materials tested under the NRTL Program. OSHA has a policy for the independence of NRTLs that specifies the criteria used for determining whether an organization meets the above requirement. (*See* OSHA Instruction CPL 1–0.3, Appendix C, paragraph V.) This policy contains a non-exhaustive list of relationships that would cause an organization to fail to meet the specified criteria. The "Independence" section of the Basic Summary, and additional information submitted by QPS (NA), shows that it has none of these relationships, or any other relationship that could subject it to undue influence when testing for product safety. QPS is a privately owned organization, and OSHA found no information about its ownership that would qualify as a conflict under OSHA's independence policy. The amended application indicates that there is no financial affiliation between the ownership of QPS and manufacturers. In summary, the information related to independence demonstrates that QPS meets the independence requirement.

Credible Reports and Complaint Handling

Section 1910.7(b)(4) specifies that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and free of bias, and for handling complaints and disputes under a fair and reasonable system. The "Report and Complaint Procedures" section of the Summary document (NA) shows that the applicant has detailed procedures describing the content of the test reports, and other detailed procedures describing the preparation and approval of these reports. This section also shows that the applicant has procedures for recording, analyzing, and processing complaints from users, manufacturers, and other parties in a fair manner. The on-site review (Ex. 4, p. 3) confirmed that QPS processes complaints in a timely and appropriate manner.

Supplemental Programs

OSHA is approving QPS to use the following supplemental program for which it applied:

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents (for calibration services only).

QPS applied to use additional programs, but then voluntarily withdrew its request after OSHA informed QPS that OSHA was ending the practice of approving most of these programs for new applicants. In the past, when granting NRTL recognition to an organization, OSHA approved the applicant's use of any supplemental programs for which the applicant met the criteria. However, OSHA is

discontinuing this practice for new applicants for the NRTL Program because the applicants do not yet have experience in implementing the procedures for testing, evaluating, and performing inspections used under the NRTL Program. This practice did not allow the NRTL's staff at its recognized site(s) to attain the necessary experience, nor did the practice allow OSHA adequate time to evaluate properly that staff's technical experience. OSHA also is discontinuing the practice when an existing NRTL applies to expand its recognition under the NRTL Program to include additional standards for testing a type of product not tested previously by the NRTL under the NRTL Program. Examples of such product testing include testing hazardous-location products when OSHA recognizes the NRTL for testing only ordinary-location products, and testing gas-operated products when OSHA limits the NRTL's recognition to testing only electrically operated products. Therefore, before OSHA approves any NRTL or applicant to use or rely on tests, evaluations, and inspections performed by other parties, OSHA must first ensure that the NRTL/applicant performs these activities adequately using its own staff located at its recognized site(s). The only exception to this policy is Program 9, which permits the use of qualified parties to calibrate an NRTL's testing equipment. This exception does not affect materially the capability of an NRTL/applicant to meet OSHA's requirements for recognition. However, regarding approval to use Program 9 for other services or supplemental programs, an NRTL/applicant may apply for such approval when OSHA determines that the NRTL/applicant tests, evaluates, and performs inspections adequately using its own staff located at its recognized site(s). Accordingly, OSHA will continue to deny use of such a program, or withdraw its prior approval to use such a program, when it determines that an NRTL/applicant is not testing, evaluating, and performing inspections adequately using its own staff located at its recognized site(s).

Additional Condition

As described above, while QPS has testing and evaluation procedures, OSHA could not review how QPS implemented them because QPS did not use them for testing and certifying products under the program. In addition, as also described above, while QPS has factory-inspection procedures, it currently does not conduct regular factory inspections. QPS recently developed some of these testing- and factory-inspection procedures. Therefore, OSHA also must review the effectiveness of QPS's testing and evaluation procedures, as well as its factory-inspection program, following recognition of QPS as an NRTL, and do so within a reasonable period after granting such recognition. Consequently, OSHA recognizes QPS conditionally, subject to a later determination of the effectiveness of these procedures. OSHA is listing this condition first under the "Conditions" section below. This condition applies solely to QPS's operations as an NRTL, and only to those products that it certifies for purposes of enabling employers to meet OSHA product-approval requirements. This condition is in addition to all other conditions that OSHA normally imposes in its recognition of an organization as an NRTL.

Imposing this condition is consistent with OSHA's past recognition of organizations as NRTLs that met the basic recognition requirements, but needed to further refine or implement their procedures (for example, *see* 63 FR 68306, 12/10/1998, and 65 FR 26637, 05/08/2000). Based on QPS's current activities in testing and certification, OSHA is confident that QPS will perform its activities properly in the areas noted above.

Final Decision and Order

The NRTL Program staff examined QPS's application, the additional submissions, the on-site review report, and other pertinent documents. Based on this examination and analysis, OSHA finds that QPS meets the requirements of 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory, subject to the limitation and conditions listed below. The recognition applies to the site listed above, and it covers the test standards listed below, subject to the limitation and conditions also listed below. Pursuant to the authority granted by 29 CFR 1910.7, OSHA hereby grants the recognition of QPS, subject to this limitation and these conditions.

Limitation

OSHA hereby limits the recognition of QPS to testing and certification of products for demonstration of conformance to the following test standards, each of which OSHA determines is an appropriate test standard within the meaning of 29 CFR 1910.7(c).[2]

UL 508A Industrial Control Panels.
UL 913 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, III, Division I, Hazardous (Classified) Locations.
UL 1203 Explosion Proof and Dust Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations.
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use.
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1: General Requirements.
UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety.
UL 60950 Information Technology Equipment.
UL 61010–1 Electrical Equipment for Measurement, Control, and Laboratory Use—Part 1: General Requirements.

OSHA limits recognition of any NRTL for a particular test standard to equipment or materials (*i.e.,* products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product.

The American National Standards Institute (ANSI) may approve the test standard listed above as an American National Standard. However, for convenience, we may use the designation of the standards-developing organization for the standard instead of the ANSI designation. Under the NRTL Program's policy (*see* OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

Conditions

QPS also must abide by the following conditions of its NRTL recognition, in addition to those conditions already required by 29 CFR 1910.7:

1. Within 30 days of certifying its first products under the NRTL Program, QPS will notify the OSHA NRTL Program Director of this activity so that OSHA

[2] The designations and titles of these test standards were current at the time of the preparation of this notice.

may schedule its first audit of QPS. At this first audit of QPS, QPS must demonstrate that it properly conducted testing, review, evaluation, and factory inspections; QPS must conduct factory inspections at the frequency set forth in the applicable NRTL Program policy.

2. QPS will allow OSHA access to its facilities and records to ascertain continuing compliance with the terms of its NRTL recognition, and to perform such investigations as OSHA deems necessary;

3. If QPS has reason to doubt the efficacy of any test standard it is using under its NRTL recognition, it will promptly inform the test standard-developing organization of this concern, and provide that organization with the appropriate relevant information on which it bases its concern;

4. QPS will not engage in, or permit others to engage in, any misrepresentation of the scope or conditions of its recognition. As part of this condition, QPS agrees that it will allow no representation that it is either a recognized or an accredited NRTL without clearly indicating the specific equipment or material to which this recognition applies, and also clearly indicating that OSHA limits its NRTL recognition to specific products;

5. QPS will inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details of these changes;

6. QPS will meet all of the terms of its NRTL recognition, and will always comply with all OSHA policies pertaining to this recognition; and

7. QPS will continue to meet the requirements for NRTL recognition in all areas covered by the scope of this recognition.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 4–2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC, on February 25, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–4698 Filed 3–1–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used to advise requesters of the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law, and the information to be provided so that records may be identified. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before May 2, 2011 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Court Order Requirements.

OMB number: 3095–0038.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and Former Federal civilian employees, their authorized representatives, State and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

Dated: February 24, 2011.

Charles K. Piercy,

Acting Assistant Archivist for Information Services.

[FR Doc. 2011–4616 Filed 3–1–11; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–282; NRC–2011–0040]

Prairie Island Nuclear Generating Plant, Unit 1, Northern States Power Company—Minnesota; Notice of Consideration of Issuance of Amendment to Facility Operating License Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on February 22, 2011 (76 FR 9827), which informed the public that the Nuclear Regulatory Commission was considering the issuance of amendments to Facility Operating License Nos. DPR–42 and DPR–60, respectively, for the Prairie Island Nuclear Generating Plant, Units 1 and 2. This action is necessary to correct the affected Facility License and Docket Nos., since the amendment request applies to Unit 1 only.

FOR FURTHER INFORMATION CONTACT: Thomas J. Wengert, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–4037, *e-mail: Thomas.Wengert@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 9827, appearing at the top of the second column: the title is corrected to read from "Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2" to "Docket No. 50–282, Prairie Island Nuclear Generating Plant, Unit 1."

Dated in Rockville, Maryland, this 23rd day of February 2011.

For the Nuclear Regulatory Commission.

Thomas J. Wengert,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–4557 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–029–COL, 52–030–COL]

In the Matter of Progress Energy Florida, Inc. (Combined License Application, Levy County Nuclear Power Plant, Units 1 and 2); Notice of Appointment of Adjudicatory Employee

Commissioners: Gregory B. Jaczko, Chairman, Kristine L. Svinicki, George Apostolakis, William D. Magwood, IV, William C. Ostendorff.

Pursuant to 10 CFR 2.4, notice is hereby given that Jean-Claude Dehmel, Senior Health Physicist, Office of New Reactors, Division of Construction Inspection and Operating Programs, has been appointed as a Commission adjudicatory employee within the meaning of section 2.4, to advise the Commission regarding issues relating to pending appeal filed by the Nuclear Regulatory Commission staff in this case. Mr. Dehmel has not previously performed any investigative or litigating function in connection with this or any related proceeding. Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or litigating functions in this proceeding are required to observe the restrictions of 10 CFR 2.347 and 2.348 in their communications with Mr. Dehmel.

It is so ordered.

Dated at Rockville, Maryland, this 24th day of February, 2011.

For the Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 2011–4675 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0441]

South Carolina Electric and Gas Company (SCE&G) and the South Carolina Public Service Authority (Santee Cooper) Notice of Availability of Application for a Combined License

On March 27, 2008, South Carolina Electric and Gas Company (SCE&G) acting as itself and agent for the South Carolina Public Service Authority also known as Santee Cooper filed with the U.S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to Section 103 of the Atomic Energy Act and Title 10 of the *Code of Federal* Regulations (10 CFR) Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," an application for combined licenses (COLs) for two AP1000 advanced passive pressurized water reactors at the existing Virgil C. Summer Nuclear Site (VCSNS) located in Fairfield County, South Carolina. The reactors are to be identified as VCSNS Units 2 and 3. The application is currently under review by the NRC staff.

An applicant may seek a COL in accordance with Subpart C of 10 CFR part 52. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. This notice is being provided in accordance with the requirements found in 10 CFR 50.43(a)(3).

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the cover letter of the application is ML081300460. Other publicly available documents related to the application, including revisions filed after the initial submission, are also posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html.*

Dated at Rockville, Maryland, this 23rd day of February 2011.

For The Nuclear Regulatory Commission.

Joseph M. Sebrosky,

Senior Project Manager, AP1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–4679 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–012 And 52–013; NRC–2010–0126]

Nuclear Innovation North America LLC; Notice of Availability of the Final Environmental Impact Statement for South Texas Project Units 3 and 4 Combined License Application Review

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Army Corps of Engineers as a cooperating agency have published a final environmental impact statement (EIS), NUREG–1937, Environmental Impact Statement for Combined Licenses (COLs) at the South Texas Project Electric Generating Station Units 3 and 4: Final Report" for the South Texas Project Electric Generating Station Units 3 and 4 COL application.

The draft EIS was published in March 2010; a notice of availability appeared in the **Federal Register** on March 25, 2010 (75 FR 14474). The purpose of this notice is to inform the public that the final EIS is available for public inspection. The final EIS may be viewed online at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1937/.* In addition, the final EIS is available for inspection in the NRC Public Document Room (PDR) located at One White Flint

North, 11555 Rockville Pike, Rockville, Maryland 20852 or from NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* The ADAMS accession numbers for the final EIS are ML11049A000 and ML11049A001. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the PDR reference staff by telephone at 1–800–397–4209 or 1–301–415–4737 or by e-mail at *pdr.resource@nrc.gov.* The Bay City Public Library, located at 1100 7th Street, Bay City, Texas, has also agreed to make the EIS available to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Jessie Muir, Environmental Projects Branch 2, U.S. Nuclear Regulatory Commission, Mail Stop T7–E30, Washington, DC, 20555–0001. Ms. Muir may be contacted by telephone at 301–415–0491 or via e-mail at *Jessie.Muir@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of February, 2011.

For the Nuclear Regulatory Commission.

Scott Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. 2011–4677 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7015–ML; ASLBP No. 10–899–02–ML–BD01]

Atomic Safety and Licensing Board; AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility); Notice of Opportunity to Participate in Uncontested/Mandatory Hearing; Procedures for Participation by Interested Governmental Entities Regarding Environmental Portion of Enrichment Facility Licensing Proceeding

February 24, 2011.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Kaye D. Lathrop, Dr. Craig M. White.

In this 10 CFR part 70 proceeding regarding the request of applicant AREVA Enrichment Services, LLC, (AES) to construct and operate its proposed Eagle Rock Enrichment Facility (EREF) in Bonneville County, Idaho, on February 10, 2011, the NRC staff issued a notice of the availability of its final environmental impact statement (FEIS) analyzing the National Environmental Policy Act (NEPA)-related environmental aspects of the AES application (NUREG–1945, ADAMS Accession Nos. ML11014A005 (Volume 1) and ML11014A006 (Volume 2)). *See* Notice of Availability of [FEIS] for the [AES] Proposed [EREF] in Bonneville County, ID, 76 FR 9054 (Feb. 16, 2011). In accord with Atomic Energy Act (AEA) section 274*l,* 42 U.S.C. § 2021(*l*), using the agency's E-Filing system,[1] on or before *Monday, April 4, 2011,* any interested State, local governmental body, or affected, Federally-recognized Indian Tribe may file with the Licensing Board in this proceeding a statement of any issues or questions about which the State, local governmental body, or Indian Tribe wishes the Board to give particular attention as part of the environmental/FEIS-related portion of the uncontested/mandatory hearing process associated with the AES application and the staff's environmental review of that application.[2] Such a statement of issues/questions may be accompanied by any supporting documentation that the State, local governmental body, or Indian Tribe sees fit to provide. Any statements of issues/questions and supporting documentation (if any) received by the Board by the deadline indicated above will be made part of the record of this proceeding.

The Board will use such statements of issues/questions and supporting documents as appropriate to inform its prehearing questions to the staff and applicant AES and its inquiries at the oral hearing currently scheduled for mid-to-late June or mid-July 2011, at a location in Idaho in the vicinity of the proposed EREF.[3] The Board may also request that one or more of the particular States, local governmental bodies, or Indian Tribes providing a statement of issues/questions send representatives to the hearing to participate as the Board may deem appropriate, including answering Board questions and/or making a statement for the purpose of assisting the Board's exploration of one or more of the issues raised by the State, local governmental body, or Indian Tribe in the prehearing filings described above.[4] The decision

[1] The process for accessing and using the agency's E-Filing system is described in the July 23, 2009 notice of hearing that was issued by the Commission for this proceeding. *See* 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 38,052, 38,055 (Jul. 30, 2009) (CLI–09–15, 70 NRC 1, 10–11 (2009)).

[2] The scope of, and procedural protocols associated with, the uncontested/mandatory hearing in this proceeding are set forth in the Licensing Board's orders of May 19, June 4, June 30, and December 17, 2010, as well as its October 7, 2010 scheduling order. *See* Licensing Board Initial Scheduling Order (May 19, 2010) at 3–7 (unpublished); Licensing Board Order (Clarifying Initial Scheduling Order) (June 4, 2010) at 2–5 (unpublished); Licensing Board Order (Setting Aside Hold-Dates for Mandatory Hearings) (June 30, 2010) at 2 (unpublished); Licensing Board Memorandum and Order (Initial General Schedule; Revision to Mandatory Hearing Procedures; Inviting Written Limited Appearance Statements; Participation by Interested Governmental Entities) (Oct. 7, 2010) at 2–3 (unpublished); Licensing Board Memorandum and Order (Providing Presentation Topics and Administrative Directives Associated with Mandatory Hearing on Safety Matters) (Dec. 17, 2010) (unpublished).

Previously, the Board issued a notice regarding participation by States, local governmental bodies, and Indian Tribes in the AEA/safety-related portion of this proceeding, *see* Atomic Safety and Licensing Board; Notice of Opportunity to Participate in Uncontested/Mandatory Hearing (Procedures for Participation by Interested Governmental Entities Regarding Safety Portion of Enrichment Facility Licensing Proceeding), 75 FR 63,213 (Oct. 14, 2010), which was the subject of an evidentiary hearing on January 25, 2011, in the Atomic Safety and Licensing Board Panel's Rockville, Maryland hearing room, *see* Tr. at 90–272.

[3] The Board anticipates issuing an additional order providing details regarding the schedule associated with, and the location of, the summer 2011 evidentiary hearing on environmental/NEPA-related matters in the near future, which would include dates associated with possible additional participation by any State, local governmental body, or Indian Tribe that, in accord with this notice, provides a timely statement of issues/questions for the Board to consider in the mandatory/uncontested hearing.

[4] States, local governments, or Indian Tribes should be aware that the uncontested/mandatory hearing is separate and distinct from the NRC's contested hearing process, which has not been invoked in this proceeding. While States, local governments, or Indian Tribes participating as described above may take any position they wish, or no position at all, with respect to the AES application or the staff's associated environmental review, they should be cognizant that, due to the inherently adversarial nature of such proceedings, many of the procedures and rights applicable to the NRC's contested hearing process generally are not available with respect to this uncontested hearing. Participation in the NRC's contested hearing process is governed by 10 CFR 2.309 (for persons or entities, including States, local governments, or Indian Tribes, seeking to file contentions of their own) and 10 CFR 2.315(c) (for interested States, local governments, and Indian Tribes seeking to participate with respect to contentions filed by others). Participation in this uncontested hearing does not affect the right of a State, local governmental entity, or Indian Tribe to participate in any separate contested hearing process that might be requested relative to this proceeding.

Additionally, States, local governmental bodies, and Indian Tribes should be aware that, in accord with 10 CFR 2.315(a), the Board is currently accepting written limited appearance statements regarding this proceeding, and anticipates conducting one or more oral limited appearance sessions in conjunction with the planned summer 2011 evidentiary hearing sessions. *See* Notice of Hearing (Notice of Evidentiary Hearing and Opportunity to View Hearing via Webstreaming; Opportunity To Submit Written Limited Appearance Statements), 76 FR 387, 388 (Jan. 4,

Continued

on whether to request the presence of representatives of a State, local governmental body, or Indian Tribe at the hearing to participate in the oral hearing is solely at the Board's discretion. The Board's request will specify the issue or issues that the representatives should be prepared to address.

It is so *ordered.*

Dated: February 24, 2011 in Rockville, Maryland.

For the Atomic Safety and Licensing Board.

G. Paul Bollwerk, III,

Chairman.

[FR Doc. 2011–4610 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Advanced Boiling Water Reactors (ABWR); Notice of Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors (ABWR) will hold a meeting on March 8–9, 2011, 11545 Rockville Pike, Rockville, MD, Room T–2B1.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

March 8–9, 2011—8:30 a.m. until 5 p.m.

The purpose of the meeting is to review Chapters 4, 5, 6, 11, 13 and 16 of the Safety Evaluation Report with no open items and the aspect of long term cooling associated with the Combined License Application for South Texas Project Units 3 and 4. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Nuclear Innovation North America, LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Maitri Banerjee (Telephone 301–415–6973 or E-mail: *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty five hard copies of each presentation or handout should be provided to the Designated Federal Official thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Designated Federal Official one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: February 24, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–4674 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 9, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, March 9, 2011–12 p.m. until 1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee. Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or E-mail: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such

2011). A written limited appearance statement or oral limited appearance session presentation would provide an alternative participation opportunity for the representative of an interested governmental entity that does not wish to submit a statement of issues/questions in accord with this notice, but does want to provide the Board with its views regarding the issues in this proceeding. The process for making an oral limited appearance statement will be outlined in a **Federal Register** notice issued prior to those sessions.

rescheduling would result in a major inconvenience.

Dated: February 23, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–4661 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA); Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA), Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, March 24, 2011—8:30 a.m. until 12:30 p.m.

The Subcommittee will review the plan and schedule for developing a level 3 PRA. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or *E-mail: John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: February 23, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–4659 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR); Notice of Meeting

The ACRS Subcommittee on U.S. EPR will hold a meeting on March 23, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, March 23, 2011—8:30 a.m. until 5 p.m.

The Subcommittee will continue its review of Chapter 15 of the U.S. EPR Document Control Design (DCD) Safety Evaluation Report (SER) with Open Items. The Subcommittee will hear presentations by and hold discussions with representatives of AREVA Inc., the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or *E-mail: Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: February 24, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–4676 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORTY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Week of February 28, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED

Week of February 28, 2011

Monday, February 28, 2011

2:30 p.m. Discussion of Management Issues (Closed—Ex. 2).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292.

Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on February 23 and 24, 2011, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Discussion of Management Issues be held on February 28, 2011, with less than one week notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities, where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: February 25, 2011.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2011–4758 Filed 2–28–11; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–09–035; NRC–2011–0048]

In the Matter of Dr. Gary Kao; Order Prohibiting Involvement In NRC–Licensed Activities

I

Dr. Gary Kao has performed duties as an authorized user at the Philadelphia Veterans Affairs Medical Center in Philadelphia, Pennsylvania (PVAMC). The Department of Veterans Affairs (VA) holds a Master Materials License (MML) Number 03–23853–01VA issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) part 30. The PVAMC is a medical broad scope permittee authorized by the MML to use a variety of byproduct materials for diagnostic and therapeutic purposes. The therapeutic treatments include brachytherapy iodine-125 used for permanent prostate implants. Dr. Kao was an approved authorized user for brachytherapy iodine-125 used for permanent prostate implants under the permit.

II

On May 16, 2008, the NRC received information that on May 5, 2008, a potential medical event (as defined in 10 CFR 35.3045) occurred at the PVAMC; this event report was followed by numerous others. By October 2009, the VA had reported to the NRC that 97 medical events involving prostate brachytherapy occurred at the PVAMC from February 2002 through June 2008. The NRC determined that Dr. Kao was the authorized physician during 91 of the 97 reported medical events.

In addition, during the period from December 2006 through November 2007, post-treatment dose verification, required pursuant to 10 CFR 35.41(b)(2), was not performed for at least 16 patients under Dr. Kao's purview due to computer system interface problems. Even after the computer interface problems were resolved, post-treatment plans were not completed for seven patients until December 2007.

In response to the reported medical events, the VA National Health Physics Program (NHPP) conducted onsite inspections at the PVAMC on May 28 and 29, 2008, and June 24 and 25, 2008. The VA NHPP issued an inspection report on October 16, 2008, documenting violations of NRC requirements. The NHPP concluded that, for medical events occurring between February 25, 2002, and May 5, 2008, Dr. Kao was aware of the D90 (dose to 90 percent of the prostate volume) doses and, in some cases, of the seeds being implanted outside the prostate. The NHPP determined that Dr. Kao had adequate clinical and technical knowledge of the patient circumstances surrounding the medical events. However, the NHPP concluded that Dr. Kao did not report these circumstances to the Radiation Safety Officer to evaluate as possible medical events. The NRC considered this a missed opportunity to correct the issue, allowing further medical events to occur.

On July 17, 2008, the PVAMC Director convened an Administrative Board of Investigation (ABI) to review the brachytherapy program. The ABI submitted the results of its investigation in a memorandum to the PVAMC Director on September 4, 2008. The ABI report concluded that Dr. Kao was aware of the poor and inconsistent results from the brachytherapy treatments, but chose not to alert senior management or the Radiation Safety Committee. Additionally, the ABI report stated that Dr. Kao chose not to stop the program when problems were identified relating to post-treatment monitoring and evaluation because of data transmission issues from the radiology department. The ABI report also noted that Dr. Kao failed to take corrective action for those cases found to have low D90s or when the computerized tomography to treatment planning system network problem made post implant evaluations impossible.

The NRC also responded to the medical events being reported by conducting onsite inspections at the PVAMC on various dates from July 23, 2008, to October 16, 2009. The results of the NRC inspections were documented in NRC Special Inspection Report 030–34325/2008–029(DNMS), dated March 30, 2009, and NRC Reactive Inspection Report 030–34325/2009–001(DNMS), dated November 17, 2009. While the NRC inspection reports did not focus on the roles of individuals and their contributions to the issues at the PVAMC, the NRC recognized that Dr. Kao was the authorized user for almost all the reported medical events. The NRC identified that contributing factors to the medical events included a lack of a safety culture where safety concerns went unreported, and a non-rigorous and informal assessment of patient doses existed which did not demonstrate a commitment to improve performance. The NRC identified eight apparent violations of NRC requirements.

The NRC discussed these violations with the VA at a Predecisional Enforcement Conference conducted on December 17, 2009. In a letter dated January 14, 2010, the VA accepted the violations, including the root or basic causes identified by the VA and the NRC.

On March 17, 2010, the NRC issued a Notice of Violation with a $227,500 proposed civil penalty to the VA. The Notice of Violation included two Severity Level II violations and three Severity Level III violations assessed a civil penalty; and one Severity Level II violation and two Severity Level IV violations not assessed a civil penalty.

The VA provided the NRC with its response to the Notice of Violation and proposed civil penalty, dated April 8, 2010, and forwarded payment of the civil penalty provided in a follow-up letter, dated April 13, 2010.

The information gathered through the multiple review processes outlined above called into question whether the NRC had reasonable assurance that Dr. Kao would perform his duties as an authorized user in accordance with NRC regulations and the Atomic Energy Act. As a result, on May 26, 2009, the NRC issued a Demand for Information (DFI) to Dr. Kao. This DFI was limited in scope to information about whether Dr. Kao was currently performing any activities using byproduct materials, if so, where, and, if not, requiring Dr. Kao to notify the NRC 72 hours before performing any such activities. In his May 28, 2009, response, Dr. Kao indicated that he was not then participating in any activities using byproduct materials, including but not limited to brachytherapy activities, at any NRC or Agreement State licensed facilities and that he would inform the NRC 72 hours prior to participating in any such activities.

On May 24, 2010, the NRC issued a second DFI to Dr. Kao, to provide an update to Dr. Kao's previous responses, and provide additional information about actions Dr. Kao had taken, or planned to take, to: (1) Ensure that, should he engage in activities involving the use of byproduct material, including but not limited to brachytherapy implant treatments, such activities would be performed safely and, specifically, that such activities would be in accordance with the written directive; (2) ensure that he fully understood NRC's definition of a medical event and the steps that he needed to take to identify and report medical events; and (3) to describe any additional information that would provide the NRC with reasonable assurance about his involvement in NRC-regulated activities.

Dr. Kao responded to the NRC's second DFI on June 1, 2010. His reply indicated that he was not designated as an authorized user on any NRC or Agreement State license or any permit and was not currently involved in any activities involving byproduct material. The reply also indicated that Dr. Kao had not taken and did not plan to take any actions at this time to ensure that any future activities would be performed safely and in accordance with a written directive. The reply did not provide any information that indicated that Dr. Kao had taken any actions to gain understanding of the NRC's definition of a medical event or to ensure that Dr. Kao would identify and report medical events. Finally, Dr. Kao indicated that he was not currently engaged in the administration of brachytherapy treatment and had no plans to become so engaged in the future. Dr. Kao attested that, prior to performing any brachytherapy treatment, he would take all necessary and appropriate steps to ensure that he was current on all applicable NRC requirements.

III

Based on Dr. Kao's performance at the PVAMC and his responses to the aforementioned DFI's, as set forth in Section II of this Order, the NRC lacks reasonable assurance until Dr. Kao takes the appropriate corrective actions and can demonstrate his knowledge of the safe use of radioactive material to protect health or to minimize the danger to life or property in compliance with the Commission's requirements. Therefore, the public health, safety and interest require that Dr. Kao be prohibited from any involvement in NRC-licensed activities until he can provide the NRC with reasonable assurance that he can safely use radioactive material in accordance with NRC requirements, and that he can correctly identify and report medical events.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 150.20, *it is hereby ordered that:*

1. Beginning on the effective date of this Order, Dr. Kao is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If, after issuance but prior to the effective date of this Order, Dr. Kao has performed NRC-licensed activities for another person or organization as an employee or contractor, he shall provide written notification to the Director of the NRC Office of Enforcement, with a copy to the Region III Regional Administrator, of the name, address and telephone number of that person or organization, and provide a copy of this Order to that person or organization. The notifications required by this paragraph, if applicable, shall be accomplished within 5 days of the effective date of this Order.

3. If, after issuance but prior to the effective date of this Order, Dr. Kao has performed activities licensed by an Agreement State, then Dr. Kao shall (1) provide a copy of the Order to the person or organization by whom he was employed or contracted within 5 days of the effective date of this Order, and (2) provide written notification to the Director of the NRC Office of Enforcement, with a copy to the Region III Regional Administrator, within 5 days of the effective date of this Order. If, after the effective date of this Order, Dr. Kao accepts an offer of employment, enters a contract to perform work, or otherwise plans to perform activities licensed by an Agreement State, Dr. Kao shall (1) provide a copy of this Order to the person or organization by whom he will be employed or contracted, within 5 days of any such offer, contract, or plan, and (2) provide written notification to the Director of the NRC Office of Enforcement, with a copy to the Region III Regional Administrator, within 5 days of any such offer, contract, or plan.

4. At any time after the effective date of this Order, Dr. Kao may file a written request with the Director of the NRC Office of Enforcement that the Order be rescinded, such that he could resume, for example, the activities of an authorized user for medical administrations, based upon the satisfactory completion of all of the following conditions:

a. In addition to the training and qualification requirements set forth in NRC regulations applicable to the use of byproduct material, Dr. Kao shall provide documentation showing that he has successfully completed specialized training regarding (1) the definition of a medical event contained in NRC regulations, how to identify a medical event, and the requirements for proper reporting of a medical event, with particular emphasis on medical events arising out of prostate brachytherapy treatments, but not limited to such treatments; and (2) the importance of reporting non-compliances and identifying appropriate corrective actions under the NRC Enforcement Policy. Such documentation shall include training dates, course syllabi, and instructor qualifications;

b. Dr. Kao shall provide documentation showing that he has successfully demonstrated, under the supervision of a trained and qualified authorized user competent in the identification and reporting of medical events, the ability to correctly identify and report medical events in accordance

with NRC regulations, including (but not limited to) medical events resulting from prostate brachytherapy. This paragraph does not permit Dr. Kao to use byproduct material, act as an authorized user, or otherwise engage in NRC-licensed activities. Such documentation shall include an attestation by the authorized user under whom Dr. Kao performed regarding the methodology (e.g., observation, examination, use of biologically equivalent human phantoms) used to demonstrate Dr. Kao's competence; and

c. Dr. Kao shall provide to the Director of the NRC Office of Enforcement, with a copy to the Region III Regional Administrator, a written document describing in detail his understanding of: (1) The 10 CFR part 35 definition of a medical event; (2) his role and responsibility regarding performing activities in accordance with a written directive; (3) the steps necessary to identify and report medical events to the NRC and (4) the process he would follow to identify the corrective actions that would be necessary if he were to be involved with a noncompliance of NRC regulations in the future, including (but not limited to) a medical event resulting from prostate brachytherapy.

5. If Dr. Kao seeks rescission of this Order under Paragraph IV.4, the information required by Paragraph IV.4 shall be provided to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, with a copy to the Regional Administrator, Region III, 2443 Warrenville Road, Suite 210, Lisle Illinois 60532.

6. This Order shall be effective 20 days following its publication in the **Federal Register** and shall remain in effect until the conditions specified above have been met and the Director of Office of Enforcement determines in writing that the Order is rescinded.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Dr. Kao of good cause.

V

In accordance with 10 CFR 2.202, Dr. Gary Kao must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. Dr. Kao's answer must be submitted under oath and affirmation. In addition, Dr. Kao and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a web browser plug-in from the NRC web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E–Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/EHD,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than Dr. Kao requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 23rd day of February 2011.

For the U.S. Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2011–4680 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0047; IA–10–010]

Gregory Desobry, Ph.D.; Order Requiring Notification of Involvement in NRC-Licensed Activities

I

Mr. Gregory Desobry previously performed duties as a medical physicist at the Philadelphia Veterans Affairs Medical Center in Philadelphia, Pennsylvania (PVAMC). The Department of Veterans Affairs (VA) holds a Master Materials License (MML) Number 03–23853–01VA issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 30. The PVAMC is a medical broad scope permittee which was authorized by the MML to use a variety of byproduct materials for diagnostic and therapeutic purposes. The therapeutic treatments included brachytherapy iodine-125 used for permanent prostate implants. Mr. Desobry's role included assuring the safe use of radioactive materials for patients, including performance of a post-treatment determination of the actual radiation treatment administered to the patient in order that the actual treatment parameters could be verified with the intended treatment identified in the written directive. Mr. Desobry was involved with the vast majority of the permanent prostate implants under the permit.

II

On May 16, 2008, the NRC received information that on May 5, 2008, a potential medical event (as defined in 10 CFR 35.3045) occurred at the PVAMC; this event report was followed by numerous others. By October 2009, the VA had reported to the NRC that 97 medical events involving prostate brachytherapy occurred at the PVAMC from February 2002 through June 2008. In addition, during the period from December 2006 through November 2007, post-treatment dose verification was not performed for at least 16 patients due to computer system interface problems. Even after the computer interface problems were resolved, post-treatment plans were not completed for seven patients until December 2007.

In response to the reported medical events, the VA National Health Physics Program (NHPP) conducted onsite inspections at the PVAMC on May 28 through 29, 2008, and from June 24 through 25, 2008, and issued an inspection report with violations of NRC requirements, dated October 16, 2008. The NHPP concluded that, for medical events occurring between February 25, 2002, and May 5, 2008, Mr. Desobry was aware of the D90 doses (the minimum dose received by 90 percent of the prostate volume) and, in some cases, of the seeds being implanted outside the prostate. However, Mr. Desobry did not report these circumstances to the RSO to evaluate as possible medical events. The NRC considered this a missed opportunity to correct the issue, allowing further medical events to occur. The NHPP also concluded that Mr. Desobry had adequate clinical and technical knowledge of the patient circumstances surrounding the medical events. Finally, the NHPP concluded that the lack of evaluations by Mr. Desobry and his failure to raise this issue to higher-level management was contrary to patient safety and demonstrated a lack of a safety conscious work environment.

The NRC also responded to the medical events being reported by conducting onsite inspections at the PVAMC on various dates from July 23, 2008, to October 16, 2009. The results of the NRC inspections were documented in NRC Special Inspection Report No. 030–34325/2008–029(DNMS), dated March 30, 2009, and NRC Reactive Inspection Report No. 030–34325/2009–001(DNMS), dated November 17, 2009. The NRC determined that Mr. Desobry was the primary medical physicist at the PVAMC for brachytherapy implants and participated in the majority of treatments that subsequently resulted in reported medical events. Also, Mr. Desobry was the primary medical physicist during the period when post

treatment dose verifications were not performed due to computer interface problems. The NRC inspection reports documented eight apparent violations of NRC requirements and noted that the VA's internal Administrative Board of Investigation concluded that there was a lack of a safety culture at the PVAMC where Mr. Desobry, among others, accepted a substandard approach to brachytherapy treatments, which resulted in poor implant techniques, a patient dose assessment process that lacked rigor and formality, a failure to communicate concerns with the implants, a misperception that safety checks were performed by other team members, and an overall system that did not demonstrate a commitment to safety.

The NRC discussed these violations with the VA in a Predecisional Enforcement Conference conducted on December 17, 2009. In a letter dated January 14, 2010, the VA accepted the violations, including the root or basic causes identified by the VA and the NRC.

On March 17, 2010, the NRC issued a Notice of Violation with a $227,500 proposed civil penalty to the VA. The Notice of Violation included two Severity Level II violations and three Severity Level III violations assessed a civil penalty; and one Severity Level II violation and two Severity Level IV violations not assessed a civil penalty. The VA provided the NRC with its response to the Notice of Violation and proposed civil penalty, dated April 8, 2010, and forwarded payment of the civil penalty provided in a follow-up letter, dated April 13, 2010.

During interviews conducted by the NRC's Office of Investigations (OI), Mr. Desobry acknowledged being involved in over 90 percent of the brachytherapy procedures conducted at the PVAMC. Mr. Desobry also informed the NRC OI that he had never received training as to what constituted a medical event and was unaware of the reporting requirements of a medical event.

Notwithstanding Mr. Desobry's training as a Medical Physicist, with board certification by the American Board of Radiology in 1989 and subsequent practice in the field of Medical Physics, Mr. Desobry's actions at the PVAMC, as they contributed to these medical events, called into question whether Mr. Desobry would work to assure that radioactive materials are used safely for patients, adequately understands the applicable NRC regulations, and would perform future activities in accordance with applicable NRC requirements and the Atomic Energy Act.

Therefore, on May 24, 2010, the NRC issued a Demand for Information (DFI) to Mr. Desobry. This DFI required Mr. Desobry to provide information about actions he had taken, or planned to take, to ensure that Mr. Desobry fully understood: (1) The 10 CFR part 35 definition of a medical event; and (2) his role and responsibilities pertaining to his duties as a medical physicist and the steps necessary to identify and report medical events to the NRC. The NRC further required information about the names and locations of the facilities where Mr. Desobry worked as a medical physicist. Finally, the NRC required information about any other additional actions not already mentioned that would provide the NRC with reasonable assurance about Mr. Desobry's involvement in NRC-licensed activities.

Mr. Desobry responded to the DFI on June 28, 2010. His reply indicated that he was not currently employed as a medical physicist, but had been employed at the Capital Health System—Mercer Campus, in Trenton, New Jersey, from January 2008 until December 2009; Capital Health System was affiliated with the University of Pennsylvania Health System during that time frame. Mr. Desobry indicated that while at Capital Health System under the supervision of the Head of the Department of Radiation Oncology, he worked with the Radiation Safety Officer and with radiation oncology physicians to examine that institution's definition of a medical event, which Mr. Desobry indicated reinforced his understanding (and corrected any prior misunderstanding) of the 10 CFR part 35 definition of a medical event; his role and responsibility regarding medical events; and the steps needed to be taken to identify and report medical events to the NRC. Mr. Desobry indicated that he was dedicated to regulatory compliance and patient safety and stated that, in the event that he should ever be hired to work again as a medical physicist, he would request training in this area at an appropriate and accredited institution.

III

Based on Mr. Desobry's response to the May 24, 2010, DFI, the NRC recognizes that Mr. Desobry has taken steps to improve his understanding of how to safely use radioactive material in treatment of patients. Mr. Desobry worked with the Radiation Safety Officer and with radiation oncology physicians at the Capital Health System facility to correct and reinforce Mr. Desobry's understanding of the 10 CFR part 35 definition of a medical event, his role and responsibility regarding medical events, and the steps needed to be taken to identify and report medical events to the NRC. However, since Mr. Desobry was involved in a large number of reported medical events at PVAMC, the NRC has concluded that it needs the opportunity to inspect Mr. Desobry's involvement in future similar NRC-licensed activities to assess the efficacy of Mr. Desobry's actions to improve his understanding of the 10 CFR part 35 definition of a medical event, his role and responsibility regarding medical events, and the steps needed to be taken to identify and report medical events to the NRC, in the event that he accepts a position as a medical physicist in the future. This action will provide NRC the opportunity to confirm that reasonable assurance exists that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected.

Therefore, the public health, safety and interest require that Mr. Desobry notify the NRC within 20 days of accepting a position as a medical physicist.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 150.20, *it is hereby ordered that:*

1. If Mr. Desobry accepts, or has accepted since the time of his response to the DFI, dated May 24, 2010, a medical physicist position involving the use of byproduct materials in either NRC jurisdiction or in an Agreement State, he shall inform the NRC within 20 days of acceptance of an employment offer or within 20 days of this Order, whichever comes later. This notification is a one-time requirement and no further notification is required for any subsequent acceptance of an employment offer. This notification shall be provided to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, with a copy to the Regional Administrator, Region III, 2443 Warrenville Road, Lisle, IL 60532. The notification shall include the name, address, and telephone number of the employer or the entity where he is or will be employed as a medical physicist.

2. This Order shall be effective 20 days following its publication in the **Federal Register** and shall remain in effect until the conditions of Item 1 have been met.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Desobry of good cause.

V

In accordance with 10 CFR 2.202, Mr. Gregory Desobry must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register.** Mr. Desobry's answer must be submitted under oath and affirmation. In addition, Mr. Desobry and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register.** Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below. To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/EHD*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than Mr. Desobry, Ph.D., requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 23rd day of February 2011.

For the U.S. Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2011–4682 Filed 3–1–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2011–61; Order No. 680]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document addresses a recent Postal Service filing concerning an additional International Business Reply Service (IBRS) Competitive Contract 3. It identifies preliminary procedural steps and invites public comment. It also grants an extension of the current contract.

DATES: *Comments are due:* March 3, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On February 18, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, that it has entered into an additional International Business Reply Service (IBRS) Competitive contract.[1] The instant contract is the successor of the IBRS Competitive contract which is the subject of Docket No. CP2010–22, which is scheduled to expire on February 28, 2011.[2] *Id.* at 3. The Postal Service requests that the instant contract be included within the IBRS Competitive Contract 3 product. *Id.* at 6.[3]

In Docket Nos. MC2011–21 and CP2011–59, the Postal Service requested that the Commission add IBRS Competitive Contract 3 to the competitive product list, and that the contract filed in Docket No. CP2011–59 serve as the baseline contract for future functional equivalence analyses of the IBRS Competitive Contract 3 product.[4] Docket Nos. MC2011–21 and CP2011–59 remain pending before the Commission.[5]

In support of its Notice, the Postal Service filed the following attachments:

- Attachment 1—a redacted copy of the contract;
- Attachment 2—a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—Governors' Decision No. 08–24, which establishes prices and classifications for the IBRS Contracts product, and includes Mail Classification Schedule language for IBRS contracts, formulas for pricing along with an analysis, certification of the Governors vote, and certification of compliance with 39 U.S.C. 3633(a); and
- Attachment 4—an application for non-public treatment of materials to maintain the redacted portions of the contract, customer identifying information and related financial information under seal.

Functional equivalence. The Postal Service asserts that the instant contract is functionally equivalent to the IBRS contracts previously filed. Notice at 4. It also asserts that the "functional terms" of the instant contract and the "functional terms" of the proposed baseline IBRS 3 Competitive Contract "are the same, although other terms that do not directly change the nature of the agreements' basic obligations may vary." *Id.* To that end, the Postal Service indicates that prices under IBRS contracts may differ based on volume or postage commitments and when the agreement is signed. It identifies certain customer-specific information that distinguishes the instant contract from the proposed baseline agreement. *Id.* at 5.

The Postal Service concludes that the instant contract complies with 39 U.S.C. 3633 and is functionally equivalent to the proposed IBRS Competitive Contract 3 baseline agreement in Docket Nos. MC2011–21 and CP2011–59. *Id.* at 6. It submits that the instant contract "should be added to the proposed IBRS 3 product grouping." *Id.* at 4.

II. Notice of Filing

The Commission establishes Docket No. CP2011–61 for consideration of matters raised by the Postal Service's Notice.

The Commission appoints William C. Miller to serve as Public Representative in this docket.

Comments. Interested persons may submit comments on whether the Postal Service's filings in the captioned docket are consistent with the policies of 39 U.S.C. 3632, 3633 or 39 CFR part 3015. Comments are due no later than March 3, 2011. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2011–61 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, William C. Miller is appointed to serve as officer

[1] Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 18, 2011 (Notice).

[2] The Commission finds that an extension of the current contract is necessary to permit sufficient time for regulatory review of the instant contract. By this Order, the Commission extends the current agreement until March 31, 2011.

[3] The Postal Service will notify the mailer of the effective date within 30 days of receiving all necessary regulatory approvals. The contract will remain in effect for 1 year unless terminated earlier by either party. *Id.* Attachment 1 at 4.

[4] *See* Docket Nos. MC2011–21 and CP2011–59, Request of the United States Postal Service to Add International Business Reply Service Competitive Contract 3 to the Competitive Products List and Notice of Filing of Contract (Under Seal), February 11, 2011.

[5] The Postal Service Notice assumes the existence of the IBRS Competitive Contract 3 product. The Commission will review the instant contract in light of its final order in Docket Nos. MC2011–21 and CP2011–59.

of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than March 3, 2011.

4. The current contract filed in Docket No. CP2010–22 for International Business Reply Service Competitive Contract 2 is authorized to continue in effect through March 31, 2011.

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

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–4684 Filed 3–1–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 63954; File No. SR–ISE–2009–35]

Securities Exchange Act of 1934; In the Matter of Chicago Board Options Exchange, Incorporated, 400 South LaSalle Street, Chicago, IL 60605; Order Setting Aside the Order by Delegated Authority Approving SR–ISE–2009–35 and Dismissing CBOE's Petition for Review

February 24, 2011.

On June 15, 2009, the International Securities Exchange, LLC ("ISE") filed a proposed rule change with the Commission seeking to establish a Qualified Contingent Cross ("QCC") Order. The proposed rule change was published for comment on June 26, 2009.[1] On August 28, 2009, the Commission approved, by authority delegated to the Division of Trading and Markets, the proposed rule change ("Approval Order").[2] On September 4, 2009, the Chicago Board Options Exchange ("CBOE") filed a notice of intention to file a petition for review of the Approval Order and, on September 14, 2009, CBOE filed a petition for review with the Commission ("Petition for Review"). Under the Commission's Rules of Practice, the filing of CBOE's Petition for Review automatically stayed the Approval Order.[3] On September 11, 2009, ISE filed a motion to lift the automatic stay. On November 12, 2009, the Commission granted CBOE's Petition for Review and denied a motion filed by ISE to lift the automatic stay.[4]

On March 17, 2010, the Commission approved the placement in the public file of a memorandum by its Division of Risk, Strategy, and Financial Innovation ("RiskFin") analyzing certain data relating to ISE's proposed rule change ("RiskFin Memo"). At the same time that the Commission approved placement of the RiskFin Memo in the public file, the Commission also issued an order extending the time to file statements in support of or in opposition to the Approval Order to give the public an opportunity to review the data and analysis in the RiskFin Memo.[5]

On July 14, 2010, ISE filed a new proposed rule change to modify the requirements for QCC Orders (file number SR–ISE–2010–73). The Commission published for public comment the modified proposal.[6] Also on July 14, 2010, ISE submitted a letter requesting that the Commission vacate the Approval Order concurrently with the approval of the new proposed rule, SR–ISE–2010–73.[7]

We have determined to construe ISE's request as a petition to vacate the Approval Order pursuant to Commission Rule of Practice 431(a), which permits us to "affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, any action made pursuant to" delegated authority.[8] We find that, in light of the filing of ISE's modified proposal regarding the QCC Orders,[9] it is appropriate to grant ISE's request and set aside the Approval Order. We also find that, given this disposition of the Approval Order, CBOE's petition for review of that order has become moot.

Accordingly, *it is ordered* that the August 28, 2009 order approving by delegated authority ISE's proposed rule change number SR–ISE–2009–35, be, and it hereby is, set aside; and

It is further *ordered* that the petition for review, filed by the Chicago Board Options Exchange on September 14, 2009, of the August 28, 2009 order approving by delegated authority ISE's proposed rule change number SR–ISE–2009–35 be, and it hereby is, *dismissed.*

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–4575 Filed 3–1–11; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Securities Exchange Act Release No. 60147 (June 19, 2009), 74 FR 30651 (June 26, 2009).

[2] *See* Securities Exchange Act Release No. 60584 (August 28, 2009), 74 FR 45663 (September 3, 2009).

[3] 17 CFR § 201.431(e).

[4] *See* Securities Exchange Act Release Nos. 60988 and 60989.

[5] *See* Securities Exchange Act Release No. 61722.

[6] *See* Securities Exchange Act Release No. 62523 (July 16, 2010), 75 FR 43211 (July 23, 2010).

[7] *See* letter from Michael J. Simon, Secretary and General Counsel, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated July 14, 2010.

[8] 17 CFR 201.431(a).

[9] The Commission has this day issued a separate order approving SR–ISE–2010–73.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63955; File No. SR–ISE–2010–73]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of a Proposed Rule Change To Modify Qualified Contingent Cross Order Rules

February 24, 2011.

I. Introduction

On July 14, 2010, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify rules for Qualified Contingent Cross ("QCC") Orders. The proposed rule change was published for comment in the **Federal Register** on July 23, 2010.[3] The Commission received eight comment letters on the proposed rule change[4] and a response letter from ISE.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62523 (July 16, 2010), 75 FR 43211 ("Notice").

[4] *See* Letters from Anthony J. Saliba, Chief Executive Officer, LiquidPoint, LLC, to Elizabeth M. Murphy, Secretary, Commission dated, July 30, 2010 ("LiquidPoint Letter 2"); William J. Brodsky, Chairman and Chief Executive Officer, Chicago Board Options Exchange, Incorporated ("CBOE"), to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010 ("CBOE Letter 1"); Ben Londergan and John Gilmartin, Co-Chief Executive Officers, Group One Trading, LP, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010 ("Group One Letter 2"); Janet M. Kissane, Senior Vice President—Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated August 9, 2010 ("NYSE Letter 2"); Thomas Wittman, President, NASDAQ OMX PHLX, Inc. ("Phlx"), to Elizabeth M. Murphy, Secretary, Commission, dated August 13, 2010 ("Phlx Letter 2"); J. Micah Glick, Chief Compliance Officer, Cutler Group LP to Elizabeth M. Murphy, Secretary, Commission, dated September 3, 2010 ("Cutler Letter"); Janet L. McGinness, Senior Vice President—Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated October 21, 2010 ("NYSE Letter 3"); and Gerald D. O'Connell, Chief Compliance Officer, Susquehanna International Group, LLP, to Elizabeth M. Murphy, Secretary, Commission, dated October 22, 2010 ("Susquehanna Letter 2").

[5] *See* Letter from Michael J. Simon, Secretary and General Counsel, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated, August 25, 2010 ("ISE Response").

This order approves the proposed rule change.

II. Background

A. Regulation NMS and Qualified Contingent Trades

The Commission adopted Regulation NMS in June 2005.[6] Among other things, Regulation NMS addressed intermarket trade-throughs of quotations in NMS stocks.[7] In 2006, pursuant to Rule 611(d) of Regulation NMS,[8] the Commission provided an exemption [9] for each NMS stock component of certain qualified contingent trades (as defined below) from Rule 611(a) of Regulation NMS for any trade-throughs caused by the execution of an order involving one or more NMS stocks (each an "Exempted NMS Stock Transaction") that are components of a qualified contingent trade.

The Original QCT Exemption defined a "qualified contingent trade" to be a transaction consisting of two or more component orders, executed as agent or principal, where: (1) At least one component is in an NMS stock; (2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; [10] (6) the Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade; [11] and (7) the Exempted NMS Stock Transaction that is part of a contingent trade involves at least 10,000 shares or has a market value of at least $200,000.[12]

In 2008, in response to a request from the CBOE, the Commission modified the Original QCT Exemption to remove the "block size" requirement of the exemption (*i.e.,* that the Exempted NMS Stock Transaction be part of a contingent trade involving at least 10,000 shares or having a market value of at least $200,000).[13]

B. Background of ISE's Proposal

In August 2009, the Commission approved the Order Protection and Locked/Crossed Market Plan [14] which, among other things, required the options exchanges to adopt written policies and procedures reasonably designed to prevent trade-throughs.[15] Unlike its predecessor plan,[16] the New Linkage Plan does not include a trade-through exemption for "Block Trades," defined to be trades of 500 or more contracts with a premium value of at least $150,000.[17] However, because the New Linkage Plan does not provide a Block Trade exemption, the Exchange was concerned that the loss of the Block Trade exemption would adversely affect the ability of its members to effect large trades that are tied to stock. Accordingly, the Exchange proposed the Original QCC Order (defined below) as a limited substitute for the Block Trade exemption to facilitate the execution of large stock/option combination orders, to be implemented contemporaneously with the New Linkage Rules.

C. SR–ISE–2009–35

1. ISE's Original Qualified Contingent Cross Order Proposal

In SR–ISE–2009–35,[18] ISE proposed a new order type, the QCC Order. The QCC Order as proposed in SR–ISE–2009–35 ("Original QCC Order") permitted an ISE member to cross the options leg of a Qualified Contingent Trade ("QCT") (as defined below) on ISE immediately upon entry, without exposure, if the order: (i) Was for at least 500 contracts; (ii) met the six requirements of the NMS QCT Exemption; and (iii) was executed at a price at or between the national best bid or offer ("NBBO"). Proposed Supplementary Material .01 to ISE Rule 715 defined a QCT as a transaction composed of two or more orders, executed as agent or principal, where: (i) At least one component is in an NMS stock; (ii) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component is contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined by the time the contingent order is placed; (v) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (vi) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.[19]

On August 28, 2009, the Commission approved, by authority delegated to the

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[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] *See* 17 CFR 242.611. An "NMS stock" means any security or class of securities, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. *See* 17 CFR 242.600(b)(46) and (47).

[8] 17 CFR 242.611(d). See also 15 U.S.C. 78mm(a)(1) (providing general authority for the Commission to grant exemptions from provisions of the Act and the rules thereunder).

[9] *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) ("Original QCT Exemption"). The Securities Industry Association ("SIA," n/k/a Securities Industry and Financial Markets Association) requested the exemption. *See* Letter to Nancy M. Morris, Secretary, Commission, from Andrew Madoff, SIA Trading Committee, SIA, dated June 21, 2006.

[10] Transactions involving securities of participants in mergers or with intentions to merge that have been announced would meet this aspect of the requested exemption. Transactions involving cancelled mergers, however, would constitute qualified contingent trades only to the extent they involve the unwinding of a pre-existing position in the merger participants' shares. Statistical arbitrage transactions, absent some other derivative or merger arbitrage relationship between component orders, would not satisfy this element of the definition of a qualified contingent trade. *See* Original QCT Exemption, *supra,* note 9.

[11] A trading center may demonstrate that an Exempted NMS Stock Transaction is fully hedged under the circumstances based on the use of reasonable risk-valuation methodologies. *Id.*

[12] *See* 17 CFR 242.600(b)(9) (defining "block size" with respect to an order as at least 10,000 shares or $200,000 in market value).

[13] *See* Securities Exchange Act Release No. 57620 (April 4, 2008) 73 FR 19271 (April 9, 2008) ("CBOE QCT Exemption"). The current QCT Exemption (*i.e.,* as modified by the CBOE QCT Exemption) is referred to herein as the "NMS QCT Exemption."

[14] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) ("New Linkage Plan"). ISE also proposed revisions to its rules to implement the New Linkage Plan ("New Linkage Rules"). *See* Securities Exchange Act Release No. 60559 (August 21, 2009), 74 FR 44425 (August 28, 2009) (SR–ISE–2009–27).

[15] A trade-through is a transaction in a given option series at a price that is inferior to the best price available in the market.

[16] The former options linkage plan, the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Former Linkage Plan"), was approved by the Commission in 2000 and was operative until August 31, 2009, when the New Linkage Plan took effect. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (File No. 4–429).

[17] *See* Sections 2(3) and 8(c)(i)(C) of the Former Linkage Plan and old ISE Rule 1902(d)(2).

[18] *See* Securities Exchange Act Release No. 60147 (June 19, 2009), 74 FR 30651 (June 26, 2009) (SR–ISE–2009–35 Notice).

[19] The six requirements are substantively identical to the six elements of a QCT under the NMS QCT Exemption. *See supra* notes 9 and 13.

Division of Trading and Markets, ISE's Original QCC Order proposal.[20] On September 4, 2009, CBOE filed with the Commission a notice of intention to file a petition for review of the Commission's approval by delegated authority [21] and, on September 14, 2009, CBOE filed a petition for review, which automatically stayed the delegated approval of the Original QCC Order.[22] On September 11, 2009, ISE filed a motion to lift the automatic stay.[23] On September 17, 2009, CBOE filed a response to ISE's Motion.[24] On September 22, 2009, ISE filed a reply in support of its motion to lift the automatic stay.[25] In addition to the submissions from CBOE and ISE, the Commission received eight comment letters requesting that the Commission grant CBOE's Petition for Review.[26]

On November 12, 2009, the Commission granted CBOE's Petition for Review and denied ISE's motion to lift the automatic stay.[27] In connection with the Order Granting Petition, the Commission received three statements in support of the Original Approval Order (two of which were submitted by ISE) [28] and five statements in opposition to the Original Approval Order (two of which were submitted by CBOE).[29]

2. Commenter's to ISE's Original QCC Order Proposal

In its Petition for Review and statements in support thereof, CBOE argued that ISE's Original QCC Order proposal was inconsistent with the Act [30] and raised important policy concerns that the Commission should address, including whether crossing straight or complex option orders without exposure is appropriate and whether permitting a "clean" cross in front of public customer orders is appropriate. CBOE believed that ISE's proposal was inconsistent with the Act because "it effectively establishes ISE as a print facility for large options orders rather than an exchange where orders are able to interact in an auction setting." [31] CBOE and certain commenters objected to the Original QCC Order proposal because, for crosses that satisfy the QCC's requirements, a member of ISE could execute a clean cross without exposing the cross to other ISE participants, which CBOE stated would represent a significant change from historical and current market practices in the options markets.[32] CBOE contended that the Commission's policy and practice had been to limit the percentage of the crossing entitlement to an amount below 50% of the order being executed, and then only after ensuring that all crossing entitlements are exposed and yield to public customer orders.[33] CBOE stated that the policies requiring exposure and yielding to public customer interest balance "the desire to permit internalization/solicitations to some degree while at the same time ensuring competition and price discovery and, to some degree, protecting public customers (including retail investors)." [34] Without an exposure requirement, CBOE contended that the proposal would have a major adverse impact on options market structure, and result in a trading environment that is "sluggish, nontransparent, and noncompetitive." [35]

CBOE and many of the commenters to the Original QCC Order proposal believed that the lack of any exposure requirement in ISE's Original QCC Order would have a detrimental effect on the options market as it would provide a disincentive to ISE's market makers to quote competitively, undercut their market making function and could result in market makers migrating off other exchanges that do not offer a QCC Order type to ISE, to take advantage of potentially wider spreads and where greater margins might be available with

[20] *See* Securities Exchange Act Release No. 60584 (August 28, 2009), 74 FR 45663 (September 3, 2009) ("Original Approval Order").

[21] *See* Letter from Paul E. Dengel, Counsel for CBOE, Schiff Hardin LLP, to Elizabeth M. Murphy, Secretary, Commission, dated September 4, 2009.

[22] *See* Letter from Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, to Elizabeth M. Murphy, Secretary, Commission, dated September 14, 2009 ("Petition for Review").

[23] *See* Brief in Support of ISE's Motion to Lift the Commission Rule 431(e) Automatic Stay of Delegated Action Triggered by CBOE's Notice of Intention to Petition for Review, dated September 11, 2009 ("ISE's Motion").

[24] *See* Response of CBOE to Motion of ISE to Lift Automatic Stay, dated September 17, 2009 ("Response to Motion").

[25] *See* Reply in Support of ISE's Motion to Lift the Commission Rule 431(e) Automatic Stay of Delegated Action Triggered by CBOE's Notice of Intention to Petition for Review, dated September 22, 2009 ("ISE Reply").

[26] *See* Letters from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX PHLX, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 22, 2009 ("Phlx Letter"); Gerald D. O'Connell, Chief Compliance Officer, Susquehanna International Group, LLP, to Elizabeth M. Murphy, Secretary, Commission, dated September 30, 2009 ("Susquehanna Letter"); Megan A. Flaherty, Chief Legal Counsel, Wolverine Trading, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated October 2, 2009 ("Wolverine Letter"); Janet M. Kissane, Senior Vice President—Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated October 5, 2009 ("NYSE Letter"); Ben Londergan, Co-CEO, Group One Trading, L.P., to Elizabeth M. Murphy, Secretary, Commission, dated October 5, 2009 ("Group One Letter"); Anthony J. Saliba, Chief Executive Officer, LiquidPoint, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated October 7, 2009 ("LiquidPoint Letter"); Kimberly Unger, Executive Director, The Security Traders Association of New York, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated October 29, 2009 ("STA Letter"); and Peter Schwarz, Integral Derivatives, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 25, 2009 ("Integral Derivatives Letter"). In addition, ISE submitted certain market volume and share statistics. *See* E-mail from Michael J. Simon, ISE, to Elizabeth King, Associate Director, Division of Trading and Markets, Commission, dated September 30, 2009.

[27] *See* Commission Order Granting Petition for Review and Scheduling Filing of Statements, dated November 12, 2009 and Commission Order Denying ISE's Motion to Lift the Commission Rule 431(e) Automatic Stay of Delegate Action Triggered by CBOE's Notice of Intention to Petition for Review, dated November 12, 2009 ("Order Granting Petition").

[28] *See* Letters from Michael J. Simon, Secretary, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated December 3, 2009 ("ISE Statement 1"); from Leonard Ellis, Head of Capital Markets, Capstone Global Markets, LLC, to Elizabeth Murphy, Secretary, Commission, dated December 3, 2009 ("Capstone Statement"); and Michael J. Simon, Secretary, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated December 16, 2009 ("ISE Statement 2").

[29] *See* Letters from Joanne Moffic-Silver, Executive Vice President, General Counsel & Corporate Secretary, CBOE, to Elizabeth M. Murphy, Secretary, Commission, dated December 3, 2009 ("CBOE Statement 1"); Michael Goodwin, Senior Managing Member, Bluefin Trading, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated December 2, 2009 ("Bluefin Statement"); John C. Nagel, Managing Director and Deputy General Counsel, Citadel, to Elizabeth M. Murphy, Commission, dated December 3, 2009 ("Citadel Statement"); Janet M. Kissane, Senior Vice President—Legal & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated December 3, 2009 ("NYSE Statement 1"); and Angelo Evangelou, Assistant General Counsel, CBOE, to Elizabeth M. Murphy, Secretary, Commission, dated January 20, 2010 ("CBOE Statement 2"). The Commission also received a statement from ISE responding to the CBOE Statement 2 regarding its statistical claim and number of trade-throughs. *See* Letter from Michael J. Simon, Secretary, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated March 1, 2010.

[30] *See e.g.,* Petition for Review, *supra* note 22, at 11. *See also* CBOE Statement 1, *supra* note 29, at 5–6, 15–16.

[31] *See* Petition for Review, *supra* note 22, at 13. *See also* Bluefin Statement, *supra* note 29; Citadel Statement, *supra* note 29, at 2; and LiquidPoint Letter, *supra* note 26, at 4. *See also* Wolverine Letter, *supra* note 26 and CBOE Statement 1, *supra* note 29, at 8.

[32] *See* Petition for Review, *supra* note 22, at 5, 9, 13–15. *See also* Bluefin Statement, *supra* note 29; Citadel Statement, *supra* note 29, at 2; NYSE Statement 1, *supra* note 29, at 2; Wolverine Letter, *supra* note 26; and LiquidPoint Letter, *supra* note 26, at 2.

[33] *See* Petition for Review, *supra* note 22, at 5, 17. CBOE also noted ISE's investment in an entity that CBOE asserted is "geared towards the non-transparent execution of block size stock-option transactions," which CBOE contended would benefit from the ISE's proposal. *Id.* at 11. *See also* CBOE Statement 1, *supra* note 29, at 13–14.

[34] *See* Petition for Review, *supra* note 22, at 15.

[35] *Id.* at 10, 14. CBOE and some commenters also noted their belief that the lack of exposure also degrades market transparency, which they believe is related to the Commission's concerns relating to dark pools. *Id.* at 16. *See also, e.g.,* NYSE Statement 1, *supra* note 29, at 1, 4.

less competitive quoting.[36] One commenter stated that the Original QCC Order, by preventing market makers from participating in trades occurring at their quoted prices, would cause market makers to spread their quotes wider to increase their profit margins in compensation for the lower volume of trading in which they participate.[37] This commenter further stated that, eventually, such market makers might very well question the wisdom of committing capital to make firm markets in the thousands of options series in which they have continuous quoting obligations.[38] Another commenter noted that, ultimately, this would "increase the costs and decrease the availability of proven, effective risk management through derivatives" and harm options market participants, as their ability "to execute their myriad strategies would disappear."[39] Thus, some commenters believed that permitting the implementation of the QCC Order would harm the growth prospects of the overall options industry.[40]

However, ISE argued that the QCC Order type would not impact the options markets, and that large-size contingency orders are executed on floor-based exchanges in a manner very similar to the new order type proposed by ISE. In addition, ISE noted that there is no meaningful transparency on floors because there is no requirement that information on orders presented to the floor be announced electronically to all exchange members or the public.[41] ISE also noted that some floor-based options exchanges have eliminated the requirement that market makers have a physical presence on the floor, which it believes undermines the claim that price discovery and transparency occur on the trading floor.[42] One commenter to the Original QCC Order proposal agreed and stated that the exposure-related concerns of other commenters "do not adequately recognize the reality of how this business is conducted today and seem to simply endorse a manual trading environment that prevents competition from electronic exchanges."[43]

In addition to CBOE's opposition to the Original QCC Order because of its lack of an exposure requirement, CBOE also argued that public customers that have previously placed limit orders at the execution price of a QCC Order would be harmed because those customers would lose priority and would not receive executions of their resting orders.[44] CBOE expressed concern that, because certain customer orders would not receive priority, the proposal would create a disincentive to placing limit orders.[45] CBOE maintained that, with respect to intra-market priority in the exchange-listed options markets, the long-standing industry policy and practice has been to require public customer priority for simple option orders.[46] Two commenters also expressed concern that the Original QCC Order would cause public customers with existing orders to be disadvantaged in the executions that they receive and would be a direct disincentive to market makers and would likely encourage wider quoted markets.[47]

ISE disagreed with the commenters' claims that public customers with resting limit orders would be harmed by its QCC proposal. ISE stated that large-size contingency trades that would qualify as QCC Orders are currently almost exclusively executed on floor-based exchanges, thus "the occasional customer limit order resting on ISE's book * * * has no opportunity to interact with [such orders]."[48]

In addition, CBOE stated that no execution entitlements have been permitted thus far, unless there is first yielding to public customer interest.[49] CBOE contrasted the Original QCC Order with the rules of all options exchanges relating to net-priced complex orders, which require that each options leg(s) of the complex order trade at or inside the NBBO and, at a minimum, price improve public customer orders in at least one component options leg.[50] CBOE also noted that, in a stock-option order net-priced package, it has been the Commission policy to require that the option leg of the stock-option order either yield to the same priced public customer order represented in the individual options series or trade at a better price.[51] CBOE argued that the Original QCC Order, in contrast, would be given special priority that goes beyond the priority afforded to packaged stock-option orders by permitting it to be crossed without giving priority to public customers.[52]

In response, ISE noted that there are many examples of exception to rules to accommodate specific trading strategies.[53] ISE further argued that there is no basis under the Act to prevent exchanges from adopting market structures and priority rules that are tailored for large-size contingent orders and that customer priority is not required in all circumstances.[54]

Commenters to the Original QCC Order also questioned whether the customer involved in the QCC Order would be able to receive the best price for its order because, without a requirement for the order to be exposed, the submitting member's customer would not have the opportunity to receive price improvement for the options leg of the order.[55] Specifically, CBOE expressed concern that, because the QCC Order would eliminate the requirement of market exposure, the customer whose order is submitted through the QCC Order mechanism might receive a fill at a price that is inferior to the price the customer would have received if the full package or even the options component had been represented to the market.[56]

ISE responded to these concerns by explaining that, when negotiating a stock-option order, market participants agree to a "net price," *i.e.,* a price that reflects the total price of both the options and stock legs of the transaction which are executed separately in the options and equity markets.[57] Accordingly, ISE believed that, for such trades, the actual execution price of each component is not as material to the parties to the trade as is the net price of the transaction.[58]

[36] *See* CBOE Statement 1, *supra* note 29, at 8; NYSE Statement 1, *supra* note 29 at 2, 3; and LiquidPoint Letter, *supra* note 26, at 3, 5. *See also* Petition for Review, *supra* note 22, at 13.

[37] *See* NYSE Statement 1, *supra* note 29 at 3.

[38] *Id.*

[39] *See* LiquidPoint Letter, *supra* note 26, at 3, 5.

[40] *See* NYSE Statement 1, *supra* note 29, at 2 and LiquidPoint Letter, *supra* note 26, at 3–5. *See also* CBOE Statement 1, *supra* note 29, at 8.

[41] *See* ISE Statement 1, *supra* note 28, at 2, 6.

[42] *Id.*

[43] *See* Capstone Statement, *supra* note 28, at 2.

[44] *See* Response to Motion, *supra* note 24, at 4.

[45] *See* Petition for Review, *supra* note 22, at 13.

[46] *Id.* at 17. *See also* CBOE Statement 1, *supra* note 29, at 5, 9.

[47] *See* Bluefin Statement, *supra* note 29 and NYSE Statement 1, *supra* note 29 at 2.

[48] *See* ISE Statement 1, *supra* note 28, at 2, 5.

[49] *See* Petition for Review, *supra* note 22, at 15.

[50] *Id.* at 18.

[51] *Id.*

[52] *Id.* at 19.

[53] *See* ISE Statement 1, *supra* note 28, at 2, 5. For example, ISE pointed to the existing rules of the options exchanges that permit the execution of one leg of a complex trade at the same price as a public customer order on the limit order book if another leg of the order is executed at an improved price. *See* CBOE Rule 6.45A.

[54] *Id.*

[55] *See* CBOE Statement 1, *supra* note 29, at 7–8 and Petition for Review, *supra* note 22, at 13. *See also* Bluefin Statement, *supra* note 29; Group One Letter, *supra* note 26, at 1–2; and Integral Derivatives Letter, *supra* note 26.

[56] *See* CBOE Statement 1, *supra* note 29, at 7.

[57] *See* ISE Statement 1, *supra* note 28, at 2, 6.

[58] *See id.*

3. RiskFin Analysis of Large-Size Contingency Orders

In support of the Original QCC Order, ISE stated that its proposed QCC Order provided an all-electronic alternative to the open-outcry execution of large stock-option trades on floor-based exchanges. While both all-electronic exchanges and floor-based exchanges have rules that require exposure of an order before a member is permitted to trade with such order, ISE believes that the requirement under ISE's rules is significantly more onerous than the similar requirement of floor-based exchanges, where such exchanges are only required to expose such orders to their members on the floor and not electronically to all members. Accordingly, ISE asserted, among other things, that it needed the QCC Order to remain competitive with other exchanges, particularly floor-based exchanges, because although these orders are exposed on the floor-based exchanges, they are rarely broken up.[59]

In order to examine ISE's contention with respect to activity on floor-based exchanges regarding large-sized contingent trades, in October 2009, the Commission's Division of Risk, Strategy and Financial Innovation ("RiskFin") requested Consolidated Options Audit Trail System ("COATS") data from certain options exchanges for each Tuesday in August and September of 2009. On March 17, 2010, RiskFin placed in the public file a memorandum analyzing the COATS data, in which it presented the findings of its analysis of ISE's contention that large-size contingency orders on floor-based exchanges were never or nearly never broken up.[60] The RiskFin Analysis provided some support for ISE's contention that large orders are broken up less frequently on floor-based exchanges than on an electronic exchange, though it did not definitively confirm ISE's contention. Specifically, in examining the percentage of trades that are either fully or near-fully executed against a single contra-party, the RiskFin Analysis showed that, for trades with a size of 2,000 contracts or more, only 12% were completely executed with only one execution on ISE, compared to 26% and 29% of trades that were filled with only one execution on two floor-based exchanges. Similarly, the data also showed that for orders of 2,000 contacts or more, only 16% of orders on ISE were 90% filled against a single contra-party, while the comparable figures for two floor-based exchanges were 35% and 37%.

While the RiskFin Analysis provided the percentage of orders on each exchange that were filled in a single execution versus multiple executions, the COATS data used for the analysis was not limited to facilitation orders.[61] Thus, the RiskFin Analysis was not dispositive with respect to ISE's contention because it contained orders unrelated to ISE's proposed order type. Concurrently with the placement of the RiskFin Analysis in the public file, the Commission issued an order extending the time to file a statement in support of or in opposition to the Original Approval Order.[62] Subsequently, the Commission received three statements relating to the RiskFin Analysis.[63]

Both CBOE and ISE focused on the RiskFin Analysis and noted that the "analysis did not confirm ISE's contention that large orders are broken-up less frequently on floor-based exchanges, though certain data did provide support for ISE's position." Although CBOE believed that the conclusion was favorable to its opposing position on ISE's QCC Order type, it clarified that it did not believe the study was necessary and that the policy question of exposure and whether it would benefit investors or not was the critical concern.[64]

Alternatively, ISE believed that the RiskFin Analysis conclusion strongly supported ISE's position that the QCC Order type is an appropriate and necessary competitive tool for the ISE.[65] In support of its belief, ISE noted that the most critical statistic in determining whether exchange members can affect a trade without being broken up is to look at how often large trades are executed in a single execution. ISE points to the RiskFin Analysis data that demonstrates that for the largest trades (2,000 or more contracts) only 12% of such trades were executed without a break-up on the ISE, while the percentages for the two floor-based exchanges were more than twice as high.[66]

Another commenter reiterated its concern that the proposed QCC Order type creates a disincentive to competitively quote by limiting price discovery opportunities and dampens transparency in the options markets.[67] In response to the RiskFin Analysis data, the commenter stated that the crossing of two orders on or within the best bid or offer of the options markets, with no interference from other participants despite exposure to the market, indicated that the cross was fairly priced as part of the off-exchange negotiation and that without exposure, there is no such comfort that the best possible price was obtained.[68]

4. Request To Vacate SR–ISE–2009–35 Original Approval Order

On July 14, 2010, concurrently with the filing of the current proposal to modify the rules for QCC Orders (*i.e.,* SR–ISE–2010–73), the Commission received a letter from ISE requesting the Commission to vacate the Original Approval Order concurrently with an approval of SR–ISE–2010–73.[69] Specifically, the Vacate Letter stated that ISE submitted its current proposal to address the most significant issues that commenters raised regarding the Original QCC Order.

D. Description of Current Proposal To Modify QCC Order Rules

As noted above, among their objections to ISE's Original QCC Order, CBOE and some commenters argued that public customers with limit orders resting on ISE's book at the execution price of a QCC Order would be harmed because the QCC Order would execute ahead of their resting orders and that, because certain customer orders would not receive priority, the proposal would create a disincentive to placing limit orders.[70] CBOE and some commenters also questioned whether the customer involved in the QCC Order would be able to receive the best price for its

[59] *See* ISE Reply, *supra* note 25, at 5.

[60] *See* Memorandum Regarding ISE Qualified Contingent Cross Proposal from Division of Risk, Strategy and Financial Innovation, dated March 1, 2010 ("RiskFin Analysis") (available at *http://www.sec.gov/rules/other/2010/sr-ise-2009–35/riskfinmemo030110.pdf*). The RiskFin Analysis reviewed COATS data from ISE, CBOE and Phlx.

[61] For example, ISE notes that the inclusion of index options trading in the data distorts the extent to which there is "break-up" of large crosses on the floor-based exchanges and believes that excluding index options from the RiskFin Analysis would significantly increase the number of floor-based exchanges' large orders that were executed without break-up. *See* ISE Statement 3, *infra* note 63, at 2–3.

[62] *See* Commission Order Extending Time to File Statements, dated March 17, 2010.

[63] *See* Letters from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Elizabeth M. Murphy, Secretary, Commission, dated April 7, 2010 ("CBOE Statement 3"); Pia K. Bennett, Associate Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated April 7, 2010 ("NYSE Statement 2"); and Michael J. Simon, Secretary, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated April 7, 2010 ("ISE Statement 3").

[64] *See* CBOE Statement 3, *supra* note 63, at 1 and 4.

[65] *See* ISE Statement 3, *supra* note 63, at 2.

[66] *Id.* at 2.

[67] *See* NYSE Statement 2, *supra* note 63, at 1.

[68] *Id.* at 3.

[69] *See* Letter from Michael J. Simon, Secretary, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated July 14, 2010 ("Vacate Letter").

[70] *See, e.g.,* Petition for Review, *supra* note 22, at 13, 15, 17. *See also* Bluefin Statement, *supra* note 29; Phlx Letter, *supra* note 26; Wolverine Letter, *supra* note 26; Group One Letter, *supra* note 26, at 1; and Integral Derivatives Letter, *supra* note 26.

order because, without a requirement for the order to be exposed, the submitting member's customer would not have the opportunity to receive price improvement for the options leg of the order.[71]

Though ISE believes that there is nothing novel about granting or not granting customer priority, that the Commission had approved exchange rules that do not provide customer priority, and that there is no statutory requirement that customer orders receive priority,[72] in SR–ISE–2010–73 the Exchange proposes to modify the Original QCC Order rules to require that a QCC Order be automatically cancelled if there are any Priority Customer[73] orders on the Exchange's limit order book at the same price. This modification thus prohibits QCC Orders from trading ahead of Priority Customer orders. In addition, in SR–ISE–2010–73, ISE proposes to increase the minimum size requirement for a QCC Order from 500 contracts to 1,000 contracts. ISE contends that such an increase supports the Exchange's intention to permit the crossing of only large-sized institutional stock-option orders.[74]

Thus, as modified, an ISE member effecting a trade pursuant to the NMS QCT Exemption could cross the options leg of the trade on ISE as a QCC Order immediately upon entry, without exposure, only if there are no Priority Customer orders on the Exchange's limit order book at the same price and if the order: (i) Is for at least 1,000 contracts; (ii) meets the six requirements of the NMS QCT Exemption;[75] and (iii) is executed at a price at or between the NBBO ("Modified QCC Order").[76] In the Notice, ISE stated that the modifications to the Original QCC Order (*i.e.,* to prevent the execution of a QCC if there is a Priority Customer on its book and to increase the minimum size of a QCC Order) remove the appearance that such orders are trading ahead of Priority Customer orders or that the QCC Order could be used to disadvantage retail customers.[77]

E. Commenters to ISE's Modified QCC Order Proposal

The Commission received eight comment letters opposing ISE's Modified QCC Order proposal and a response letter from ISE.[78] While some commenters noted that ISE had addressed their prior objections relating to customer priority,[79] commenters objected to ISE's modified proposal because it remained unchanged from the original proposal with respect to exposure, in that QCC Orders would still be crossed without exposure.[80] Commenters noted that exposure is especially critical in the options market, which is quote-driven and relies on market makers to ensure that two-sided quotations are available for hundreds of thousands of different options series.[81] Commenters argued that exposure, in addition to allowing for the possibility of price improvement, provides market makers an opportunity to participate in trades, which in turn provides them incentives to quote aggressively, thus benefiting the market as a whole.[82]

Relatedly, several commenters warned against removing incentives for liquidity providers in light of the market events of May 6, 2010.[83] One commenter noted that any tightening of market maker obligations could only succeed if market maker benefits were correspondingly aligned, and argued that ISE's proposal would withdraw significant options order flow and, thus, the opportunity for market makers to interact with that order flow via exposure.[84]

In addition, CBOE stated that order exposure and the opportunity for market participant interaction was integrally related to what constitutes an exchange and stressed that the Commission should not abandon such long-held standards to permit "print" mechanisms on options exchanges, which it believed the ISE proposal to be.[85] CBOE and NYSE also noted that the Commission has generally not permitted 100% participation guarantees, as the QCC Order would provide for.[86]

CBOE also noted that the component legs of stock-option orders are exposed on options exchanges as a package (*e.g.,* through complex order mechanisms) with all terms of the complete order being transparent to the marketplace.[87] This commenter noted that such stock-option orders, while still requiring exposure, are granted intermarket trade-through relief. In contrast, this commenter saw no reason why QCC Orders should receive any special treatment (*i.e.,* not be required to be exposed) and noted that they are not represented as a package and thus do not provide the same transparency as stock-option orders, with only upstairs parties to these trades aware of the complete terms of the total transaction.[88] In response, ISE reiterated its belief that the crossing of large-size contingency orders on a floor today is not transparent because "there are very few traders (if any) on the floor to hear an order 'announced'" and are executed with little, if any. interruption.[89] ISE stated that commenters opposed to its proposal were arguing about the theoretical benefits of exposure and ignoring the realities of what is occurring in the markets.[90] Further, ISE stated that, currently, members arrange large stock-option trades upstairs and then bring them to an exchange for execution. Floor exchanges, ISE argued, accommodate these trades by providing a market structure where there is little

[71] *See, e.g.,* CBOE Statement 1, *supra* note 29, at 7–8 and Petition for Review, *supra* note 22, at 13. *See also* Bluefin Statement, *supra* note 29; Group One Letter, *supra* note 26, at 1–2; and Integral Derivatives Letter, *supra* note 26.

[72] *See* ISE Statement 1, *supra* note 28, at 4. *See also* Capstone Statement, *supra* note 28, at 2.

[73] Under ISE Rule 100(37A), a priority customer is a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Pursuant to ISE Rule 713, priority customer orders are executed before other trading interest at the same price.

[74] *See* Vacate Letter, *supra* note 69, at 1.

[75] *See supra* notes 9 and 13 and accompanying text.

[76] If there are Priority Customer orders on ISE's limit order book at the same price, the QCC Order would be automatically canceled. *See* proposed ISE Rule 721(b)(1).

[77] *See* Notice, *supra* note 3.

[78] *See supra* notes 4 and 5.

[79] *See* CBOE Letter 1, *supra* note 4, at 1, NYSE Letter 2, *supra* note 4, at 7, and Susquehanna Letter 2, *supra* note 4, at 1. *See also supra* notes 44–54 and accompanying text.

[80] *See* CBOE Letter 1, *supra* note 4, at 1; Phlx Letter 2, *supra* note 4, at 1; LiquidPoint Letter 2, *supra* note 4, at 1–2; Group One Letter 2, *supra* note 4, at 1; NYSE Letter 2, *supra* note 4, at 1–2, 7–8; and Susquehanna Letter 2, *supra* note 4, at 1.

[81] *See* CBOE Letter 1, *supra* note 4, at 1–2; Phlx Letter 2, *supra* note 4, at 1; LiquidPoint Letter 2, *supra* note 4, at 1, 2; Group One Letter 2, *supra* note 4, at 2; NYSE Letter 2, *supra* note 4, at 3, 7–8; NYSE Letter 3, *supra* note 4, at 2; and Susquehanna Letter 2, *supra* note 4, at 3.

[82] *See* CBOE Letter 1, *supra* note 4, at 2–3 and Phlx Letter 2, *supra* note 4, at 1. *See also* Cutler Letter, *supra* note 4 (stating that without exposure, there is no incentive for market makers to display liquidity, provide liquidity or offer price improvement) and LiquidPoint Letter 2, *supra* note 4, at 2 (stating that if market makers are not able to participate in *all* price discovery opportunities, they would be left to participate in only price discovery opportunities that are less-desirable and that the result of this negative selection would be "increased risk, a higher probability of unprofitable trades and a reticence to post their best markets. *See also* Group One Letter 2, *supra* note 4, at 2; NYSE Letter 2, *supra* note 4, at 2, 3; and Susquehanna Letter 2, *supra* note 4, at 3.

[83] *See* CBOE Letter 1, *supra* note 4, at 1, 3–4; Group One Letter 2, *supra* note 4, at 2; and NYSE Letter 2, *supra* note 4, at 2.

[84] *See* CBOE Letter 1, *supra* note 4, at 3.

[85] *See* CBOE Letter 1, *supra* note 4, at 3, 5.

[86] *See* NYSE Letter 2, *supra* note 4, at 3; NYSE Letter 3, *supra* note 4, at 1–2; and CBOE Letter 1, *supra* note 4, at 2.

[87] *See* CBOE Letter 1, *supra* note 4, at 4–5. *See also* NYSE Letter 2, *supra* note 4, at 4.

[88] *See* CBOE Letter 1, *supra* note 4, at 4–5. *See also* Cutler Letter, *supra* note 4; and NYSE Letter 2, *supra* note 4, at 4.

[89] *See* ISE Statement 1, *supra* note 28, at 3.

[90] *See* ISE Response, *supra* note 5, at 2.

or no chance that members will break up the pre-arranged trade.[91] Another commenter believed that splitting a stock-option order into separate executions for the individual stock and options legs, rather than representing the stock-option order as a package, was generally not in the best interest of the customer from a best execution point of view.[92]

Another commenter reiterated its belief that the benefits of price discovery and transparency afforded by exposure were especially crucial for broker facilitated crosses such as QCC Orders because of the inherent conflict of interest for such orders since a broker is "betting against the customer" in such trades.[93] Commenters also contended that ISE's claim that it needed the QCC Order to compete with trading on floor-based exchanges is erroneous and disingenuous, and that it ignored the broader ramification of QCC Orders that, whereas trading floors require exposure of orders before any executions can occur, the QCC Order would ensure that exposure was eliminated altogether.[94]

With respect to the increase in contract size for QCC Orders from 500 contracts (as originally proposed in SR–ISE–2009–35) to 1,000 contracts, NYSE questioned whether the change was meaningful in limiting the scope of the proposed QCC Order type, as it believed that market participants could game the rule to meet this requirement,[95] while another commenter believed that the 1,000 contract requirement was a relatively low threshold that would permit large broker-dealers to shut out other market participants on relatively small trades.[96]

In its response letter, ISE reiterated its argument that its QCC Order proposals were simply a way for ISE to compete against floor-based options exchanges for the execution of large stock-option orders.[97] ISE countered commenters' arguments regarding the lack of exposure of QCC Orders by stating that the required exposure of orders on floor-based exchanges was nominal and theoretical, and ignores the realities of what is occurring on those markets.[98] One commenter agreed with ISE's assertion that floor-based options exchanges enjoy an unfair competitive advantage over all-electronic options exchanges for executing clean blocks, noting that, in its own experience, "institutional brokers are much more apt to use a trading floor when the primary intention is to execute as clean a cross as possible."[99] ISE stated its belief that floor-based options markets accommodate such trades by "providing a market structure in which there is little or no chance that members will break up the pre-arranged trade" by structuring their markets to provide such trades with the least amount of "friction."[100] ISE contended that, if floor-based exchanges were serious about exposure, they would expose such orders to their entire marketplace, rather than limiting exposure to "those few (if any) members physically present in the floor-based trading crowd."[101] One commenter echoed ISE's contention and suggested that a common rule for all block crosses on all options exchanges should be adopted to require all pre-negotiated option block crosses, including floor crosses, to be entered into an electronic crossing mechanism. This commenter believed that such a requirement would ensure that market makers could compete for such orders and thus provide the orders a greater chance at price improvement, as well as act as a check to ensure that the brokers facilitating these orders priced them competitively.[102]

ISE also countered commenters' arguments that the QCC Order proposal, because it does not provide for exposure, would not allow for price improvement by reiterating its prior explanation that those parties involved in a stock-option order negotiate such transactions on a "net price" basis, reflecting the total price of both the stock and options legs of the trade. Thus, ISE argued, the actual execution price of each individual component is not as material to the parties involved as is the net price of the entire transaction, which ISE believes means that price improvement of the individual legs of the trade is not a critical issue in the execution of a QCC Order.[103]

In addition, ISE argued that its QCC Order proposal has no relevance to the market events of May 6, 2010, despite commenters' attempts to link the two. ISE again noted that large stock-options trades are currently arranged upstairs and then shopped among exchanges to achieve a clean cross.[104] ISE argued that, accordingly, large stock-option trades today "rely on the liquidity that firms can provide in arranging these trades and do not now include exchange-provided liquidity."[105] ISE believed that the QCC Order type would simply provide a competitive electronic vehicle for such trades and will have no effect on available liquidity.[106]

In response to NYSE's contention that the QCC Order's contract size requirement could be gamed, ISE noted that any member creating "fake customer orders" would be misrepresenting its order in violation of ISE's rules and expressed confidence that its surveillance program would be able to catch any such attempt.[107] In addition, ISE clarified the calculation of the 1,000 contract minimum size for a QCC Order noting that, in order to meet this requirement, an order must be for at least 1,000 contracts and could not be, for example, two 500 contract orders or two 500 contract legs.[108]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[109] Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(5)[110] and 6(b)(8),[111] which require, among other things, that the rules of a national securities exchange be 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 and that the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, the Commission finds that the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act,[112] in which Congress found that it is in the public

[91] *Id.*

[92] *See* Susquehanna Letter 2, *supra* note 4, at 4–5.

[93] *See* Group One Letter 2, *supra* note 4, at 1–2. *See also supra* note 55 and accompanying text.

[94] *See* CBOE Letter 1, *supra* note 4, at 4–5. *See also* NYSE Letter 2, *supra* note 4, at 3–4 and NYSE Letter 3, *supra* note 4, at 2.

[95] *See* NYSE Letter 2, *supra* note 4, at 5–7 and NYSE Letter 3, *supra* note 4, at 3.

[96] *See* Cutler Letter, *supra* note 4.

[97] *See* ISE Response, *supra* note 5, at 1–2.

[98] *Id.* at 2.

[99] *See* Susquehanna Letter 2, *supra* note 4, at 2.

[100] *Id.*

[101] *Id.*

[102] *See* Susquehanna Letter 2, *supra* note 4, at 2.

[103] *See* ISE Response, *supra* note 5, at 3–4.

[104] *See* ISE Response, *supra* note 5, at 4.

[105] *Id.*

[106] *Id.*

[107] *Id.* at 5–6.

[108] *Id.* at 6.

[109] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[110] 15 U.S.C. 78f(b)(5).

[111] 15 U.S.C. 78f(b)(8).

[112] 15 U.S.C. 78k–1(a)(1)(C).

interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, the economically efficient execution of securities transactions.

A. Consistency With the NMS QCT Exemption

In approving the Original QCT Exemption, the Commission recognized that contingent trades can be "useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and *equity derivatives such as options* [italics added]." [113] The Commission stated that "[t]hose who engage in contingent trades can benefit the market as a whole by studying the relationships between the prices of such securities and executing contingent trades when they believe such relationships are out of line with what they believe to be fair value." [114] As such, the Commission stated that transactions that meet the specified requirements of the NMS QCT Exemption could be of benefit to the market as a whole, contributing to the efficient functioning of the securities markets and the price discovery process.[115]

The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (*i.e.,* the net price of the entire contingent trade), rather than on the absolute price of any single component.[116] Pursuant to the requirements of the NMS QCT Exemption, the spread or ratio between the relevant instruments must be determined at the time the order is placed, and this spread or ratio stands regardless of the market prices of the individual orders at their time of execution. As the Commission noted in the Original QCT Exemption, "the difficulty of maintaining a hedge, and the risk of falling out of hedge, could dissuade participants from engaging in contingent trades, or at least raise the cost of such trades." [117] Thus, the Commission found that, if each stock leg of a qualified contingent trade were required to meet the trade-through provisions of Rule 611 of Regulation NMS, such trades could become too risky and costly to be employed successfully and noted that the elimination or reduction of this trading strategy potentially could remove liquidity from the market.[118]

The Commission believes that ISE's proposal, which would permit a clean cross of the options leg of a subset of qualified contingent trades (*i.e.,* a stock-option qualified contingent trade that meets the requirements of the NMS QCT Exemption), is appropriate and consistent with the Act in that it would facilitate the execution of qualified contingent trades, for which the Commission found in the Original QCT Exemption to be of benefit to the market as a whole, contributing to the efficient functioning of the securities markets and the price discovery process.[119] The QCC Order would provide assurance to parties to stock-option qualified contingent trades that their hedge would be maintained by allowing the options component to be executed as a clean cross.

B. Exposure and Qualified Contingent Trades

Commenters believed that ISE's modifications to the Original QCC Order did not adequately address their main objection regarding the QCC Order, particularly in that it would continue to permit option crosses to occur without prior exposure to the marketplace. Commenters generally reiterated their prior comments that exposing options orders promotes price competition, increases order interaction, and leads to better quality executions for investors by providing opportunities for price improvement.[120] These commenters continued to argue that, without exposure, the Modified QCC Order would cause significant harm to the options market because it would eliminate valuable incentive for dedicated liquidity provider participation.[121]

In response to commenters' concerns that the Modified QCC Order would have a detrimental effect on the options markets because of the lack of any exposure requirement, ISE stated that exchange members arrange large stock-option trades upstairs and then bring them to an exchange for execution, and that exchange floors accommodate the trades by providing a market structure in which there is little or no chance that members will break up the pre-arranged trade.[122] ISE believed that, rather than harming the options markets, the QCC proposal would permit fair competition to occur between floor-based and all-electronic options exchanges by providing an all-electronic execution alternative to floor-based executions.[123]

The Commission recognizes that significant liquidity on options exchanges is derived from quotations submitted by members of an exchange that are registered as market makers.[124] Pursuant to the options exchanges' rules, market makers generally are required to maintain continuous two-sided quotations in their registered options for a specified percentage of the time, or in a specified number of series or classes. One of the perceived benefits for market makers with such obligations is the opportunity to participate in transactions through the exposure requirement. As noted above, some commenters argue that the lack of exposure for QCC Orders would act as a disincentive for market maker participation.[125]

While the Commission believes that order exposure is generally beneficial to options markets in that it provides an incentive to options market makers to provide liquidity and therefore plays an important role in ensuring competition and price discovery in the options markets, it also has recognized that contingent trades can be "useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and *equity derivatives such as options* [italics added]".[126] and that "[t]hose who engage in contingent trades can benefit the market as a whole by studying the relationships between the prices of such securities and executing contingent trades when they believe such relationships are out of line with what they believe to be fair value." [127] As such, the Commission stated that transactions that meet the specified requirements of the NMS QCT Exemption could be of benefit to the market as a whole, contributing to the efficient functioning of the securities

[113] *See* Original QCT Exemption, *supra* note 9, at 52830.

[114] *Id.* at 52831.

[115] *See* CBOE QCT Exemption, *supra* note 13.

[116] *See* Original QCT Exemption, *supra* note 9, at 52829 (explaining SIA's position on the need for the Original QCT Exemption).

[117] *Id.* at 52831.

[118] *Id.*

[119] *Id.*

[120] *See supra* notes 70 and 85–94 and accompanying text.

[121] *See supra* notes 81–84 and accompanying text.

[122] *See supra* notes 97–100 and accompanying text.

[123] *See* ISE Response, *supra* note 5, at 3.

[124] *See, e.g.,* Susquehanna Letter 2, *supra* note 4, at 3 (noting that, in the options market, market makers provide over 90% of the liquidity).

[125] *See supra* notes 81–82 and accompanying text.

[126] *See* Original QCT Exemption, *supra* note 9, at 52830–52831.

[127] *Id.*

markets and the price discovery process.[128]

Thus, in light of the benefits provided by both the requirement for exposure as well as by qualified contingent trades such as QCC Orders, the Commission must weigh the relative merits of both for the options markets.[129] The Commission believes that the proposal, in requiring a QCC Order to be: (1) Part of a qualified contingent trade under Regulation NMS; (2) for at least 1,000 contracts; (3) executed at a price at or between the national best bid or offer; and (4) cancelled if there is a Priority Customer Order on ISE's limit order book, strikes an appropriate balance for the options market in that it is narrowly drawn [130] and establishes a limited exception to the general principle of exposure and retains the general principle of customer priority in the options markets. Furthermore, not only must a QCC Order be part of a qualified contingent trade by satisfying each of the six underlying requirements of the NMS QCT Exemption, the requirement that a QCC Order be for a minimum size of 1,000 contracts provides another limit to its use by ensuring only transactions of significant size may avail themselves of this order type.[131]

As noted above, some commenters argue that the concerns regarding the impact of the QCC Order on the incentives for liquidity providers are heightened by the events of May 6, 2010.[132] Specifically, commenters argued that in light of the events of May 6, 2010, the Commission should not improve measures that would create disincentives for market makers to provide liquidity to the markets.[133] The Commission recognizes the important role liquidity providers play, particularly in the options markets, which tend to be more quote driven than the cash equities markets. In addition, the Commission is cognizant of the concerns raised by some commenters with regard to the events of May 6, 2010. However, as discussed above, the Commission has weighed the relative merits of the QCC Order and of the exposure of such orders and believes that ISE's proposal is consistent with the Act.

C. Customer Protection

In response to concerns that the Original QCC Order did not provide adequate customer protection because the QCC Order would have priority over resting customer orders on ISE's books,[134] ISE proposes to modify the QCC Order to provide for automatic cancellation of a QCC Order if there is a Priority Customer order on the Exchange's limit order book at the same price. The Commission believes that this modification to yield to a Priority Customer order on the book would ensure that QCC Orders do not trade ahead of Priority Customer orders at the same price, and thus should alleviate commenters' concerns regarding the Original QCC Order that customers would not receive executions of their resting orders, which could also create a disincentive to placing limit orders.

Some commenters objected to the Modified QCC Order because they believed that a customer order submitted as a QCC Order risks receiving a fill at an inferior price to the price it could have received if it has been exposed to the market.[135] Another commenter was concerned that, while the option trade would be within the NBBO, the stock trade may be priced outside of the market and that "[t]he effect is a valuation for the stock/option package * * * unrestricted by competition * * *."[136] In response to commenters concerns regarding price improvement, ISE argued that the actual execution price of each component is not as material to the parties as is the net price of the transaction and accordingly, price improvement of the individual legs of the trade is not a critical issue in executing the QCC Order.[137]

As discussed above, QCC Orders must be for 1,000 or more contracts, in addition to meeting all of the requirements of the NMS QCT Exemption. The Commission believes that those customers participating in QCC Orders will likely be sophisticated investors who should understand that, without a requirement of exposure for QCC Orders, their order would not be given an opportunity for price improvement on the Exchange. These customers should be able to assess whether the net prices they are receiving for their QCC Order are competitive, and who will have the ability to choose among broker-dealers if they believe the net price one broker-dealer provides is not competitive. Further, broker-dealers are subject to a duty of best execution for their customers' orders, and that duty does not change for QCC Orders.

IV. Conclusion

In sum, the Commission believes that ISE's Modified QCC Order is consistent with the NMS QCT Exemption, which found that qualified contingent trades are of benefit to the market as a whole and a contribution to the efficient functioning of the securities markets and the price discovery process.[138] In addition, the Exchange's Modified QCC Order is narrowly drawn to provide a limited exception to the general principle of exposure, and retains the general principle of customer priority. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[139] Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(5) [140] and 6(b)(8) of the Act.[141] Further, the Commission finds that the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act.[142]

It is therefore ordered, the proposed rule change (SR–ISE–2010–73) is approved pursuant to Section 19(b)(2) of the Act.[143]

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–4574 Filed 3–1–11; 8:45 am]

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[128] *See* CBOE QCT Exemption, *supra* note 13, at 19273.

[129] The Commission notes that it has previously permitted the crossing of two public customer orders, for which no exposure is required on ISE and CBOE. *See* CBOE Rule 6.74A.09 and ISE Rules 715(i) and 721.

[130] The Commission notes that, in its request to remove the block-size requirement of the Original QCT Exemption, CBOE stated that the NMS QCT Exemption's other requirements would ensure that the exemption was narrowly drawn and limited to a small number of transactions. *See* Letter, dated November 28, 2007, from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Nancy M. Morris, Secretary, Commission, at 1, 4.

[131] The Commission notes that the requirement that clean crosses be of a certain minimum size is not unique to the QCC Order. *See, e.g.,* NSX Rule 11.12(d), which requires, among other things, that a Clean Cross be for at least 5,000 shares and have an aggregate value of at least $100,000.

[132] *See supra* notes 83–84 and accompanying text.

[133] *Id.*

[134] *See* Petition for Review, *supra* note 22, at 15, 17. *See also* Bluefin Statement, *supra* note 29; Phlx Letter, *supra* note 26; Wolverine Letter, *supra* note 26; Group One Letter, *supra* note 26, at 1; and Integral Derivatives Letter, *supra* note 26.

[135] *See* Group One Letter 2, *supra* note 4, at 1; and CBOE Letter 1, *supra* note 4, at 2.

[136] *See* LiquidPoint Letter 2, *supra* note 4, at 2.

[137] *See supra* note 103 and accompanying text.

[138] *See supra* note 13.

[139] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[140] 15 U.S.C. 78f(b)(5).

[141] 15 U.S.C. 78f(b)(8).

[142] 15 U.S.C. 78k–1(a)(1)(C).

[143] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63961; File No. SR–FINRA–2010–059]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 4360 (Fidelity Bonds) in the Consolidated FINRA Rulebook

February 24, 2011.

I. Introduction

On November 10, 2010, the Financial Industry Regulatory Authority, Inc., ("FINRA") filed with the Securities and Exchange Commission ("SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rule 3020 (Fidelity Bonds) with certain changes into the consolidated FINRA rulebook as FINRA Rule 4360 (Fidelity Bonds). The proposed rule change was published for comment in the **Federal Register** on November 26, 2010.[3] The Commission received three comment letters on the proposed rule change.[4]

II. Description of Proposed Rule Change

A. Summary

FINRA is proposing to adopt NASD Rule 3020 (Fidelity Bonds) with certain changes into the consolidated FINRA rulebook as FINRA Rule 4360 (Fidelity Bonds), taking into account Incorporated NYSE Rule 319 (Fidelity Bonds) and its Interpretation. NASD Rule 3020 and NYSE Rule 319 (and its Interpretation) generally require members to maintain minimum amounts of fidelity bond coverage for officers and employees, and that such coverage address losses incurred due to certain specified events. The purpose of a fidelity bond is to protect a member against certain types of losses, including, but not limited to, those caused by the malfeasance of its officers and employees, and the effect of such losses on the member's capital.

B. Description of Proposed Rule Change

1. General Provision

NASD Rule 3020(a) generally provides that each member required to join the Securities Investor Protection Corporation ("SIPC") that has employees and that is not a member in good standing of one of the enumerated national securities exchanges must maintain fidelity bond coverage; NYSE Rule 319(a) generally requires member organizations doing business with the public to carry fidelity bonds. Proposed FINRA Rule 4360 would require each member that is required to join SIPC to maintain blanket fidelity bond coverage with specified amounts of coverage based on the member's net capital requirement, with certain exceptions.[5]

NASD Rule 3020(a)(1) requires members to maintain a blanket fidelity bond in a form substantially similar to the standard form of Brokers Blanket Bond promulgated by the Surety Association of America. Under NYSE Rule 319(a), the Stockbrokers Partnership Bond and the Brokers Blanket Bond approved by the NYSE are the only bond forms that may be used by a member organization; NYSE approval is required for any variation from such forms. Proposed FINRA Rule 4360 would require members to maintain fidelity bond coverage that provides for per loss coverage without an aggregate limit of liability.

Under proposed FINRA Rule 4360, a member's fidelity bond must provide against loss and have Insuring Agreements covering at least the following: Fidelity, on premises, in transit, forgery and alteration, securities and counterfeit currency. The proposed rule change modifies the descriptive headings for these Insuring Agreements, in part, from NASD Rule 3020(a)(1) and NYSE Rule 319(d) to align them with the headings in the current bond forms available to broker-dealers.

Proposed FINRA Rule 4360 would also eliminate the specific coverage provisions in NASD Rule 3020(a)(4) and (a)(5), and NYSE Rule 319(d)(ii)(B) and (C), and (e)(ii)(B) and (C), that permit less than 100 percent of coverage for certain Insuring Agreements (*i.e.,* fraudulent trading and securities forgery) to require that coverage for all Insuring Agreements be equal to 100 percent of the firm's minimum required bond coverage.[6]

As currently provided in NASD Rule 3020 and NYSE Rule 319, proposed FINRA Rule 4360 would require that a member's fidelity bond include a cancellation rider providing that the insurer will use its best efforts to promptly notify FINRA in the event the bond is cancelled, terminated or "substantially modified." Also, the proposed rule change would adopt the definition of "substantially modified" in NYSE Rule 319 and would incorporate NYSE Rule 319.12's standard that a firm must *immediately* advise FINRA in writing if its fidelity bond is cancelled, terminated or substantially modified.[7]

FINRA is proposing to add supplementary material to proposed FINRA Rule 4360 that would require members that do not qualify for a bond with per loss coverage without an aggregate limit of liability to secure alternative coverage. Specifically, a member that does not qualify for blanket fidelity bond coverage as required by proposed FINRA Rule 4360(a)(3) would be required to maintain substantially similar fidelity bond coverage in compliance with all other provisions of the proposed rule, provided that the member maintains written correspondence from two insurance providers stating that the member does not qualify for the coverage required by proposed FINRA Rule 4360(a)(3).

2. Minimum Required Coverage

Proposed FINRA Rule 4360 would require each member to maintain, at a minimum, fidelity bond coverage for any person associated with the member, except directors or trustees of a member who are not performing acts within the scope of the usual duties of an officer or employee. As further detailed below, the proposed rule change would eliminate the exemption in NASD Rule 3020 for sole stockholders and sole proprietors.

The proposed rule change would increase the minimum required fidelity bond coverage for members, while continuing to base the coverage on a member's net capital requirement. To that end, proposed FINRA Rule 4360 would require a member with a net capital requirement that is less than $250,000 to maintain minimum coverage of the greater of 120 percent of the firm's required net capital under Exchange Act Rule 15c3–1 or $100,000. The increase to $100,000 would modify the present minimum requirement of $25,000.

Under proposed FINRA Rule 4360, members with a net capital requirement of at least $250,000 would use a table in the rule to determine their minimum fidelity bond coverage requirement. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 63331 (Nov. 17, 2010), 75 FR 72850 (Nov. 26, 2010) ("Notice").

[4] *See* Letters from Richard M. Garone, Travelers, dated Dec. 16, 2010 ("Travelers"); Letter from Robert J. Duke, The Surety & Fidelity Association of America, dated Dec. 17, 2010 ("SFAA"); and Letter from Albert Kramer, Kramer Securities Corporation, dated Dec. 31, 2010 ("Kramer").

[5] *See* Notice, *supra* note 3, for a more detailed discussion of the proposed rule change.

[6] Members may elect to carry additional, optional Insuring Agreements not required by proposed FINRA Rule 4360 for an amount less than 100 percent of the minimum required bond coverage.

[7] NYSE Rule 319 defines the term "substantially modified" as any change in the type or amount of fidelity bonding coverage, or in the exclusions to which the bond is subject, or any other change in the bond such that it no longer complies with the requirements of the rule.

table is a modified version of the tables in NASD Rule 3020(a)(3) and NYSE Rule 319(e)(i). The identical NASD and NYSE requirements for members that have a minimum net capital requirement that exceeds $1 million would be retained in proposed FINRA Rule 4360; however, the proposed rule would adopt the higher requirements in NYSE Rule 319(e)(i) for a member with a net capital requirement of at least $250,000, but less than $1 million.

Under the proposed rule, the entire amount of a member's minimum required coverage must be available for covered losses and may not be eroded by the costs an insurer may incur if it chooses to defend a claim. Specifically, any defense costs for covered losses must be in addition to a member's minimum coverage requirements. A member may include defense costs as part of its fidelity bond coverage, but only to the extent that it does not reduce a member's minimum required coverage under the proposed rule.

3. Deductible Provision

Under current NASD Rule 3020(b), a deductible provision may be included in a member's bond of up to $5,000 or 10 percent of the member's minimum insurance requirement, whichever is greater. If a member desires to maintain coverage in excess of the minimum insurance requirement, then a deductible provision may be included in the bond of up to $5,000 or 10 percent of the amount of blanket coverage provided in the bond purchased, whichever is greater. The excess of any such deductible amount over the maximum permissible deductible amount based on the member's minimum required coverage must be deducted from the member's net worth in the calculation of the member's net capital for purposes of Exchange Act Rule 15c3–1. Where the member is a subsidiary of another member, the excess may be deducted from the parent's rather than the subsidiary's net worth, but only if the parent guarantees the subsidiary's net capital in writing.

Under NYSE Rule 319(b), each member organization may self-insure to the extent of $10,000 or 10 percent of its minimum insurance requirement as fixed by the NYSE, whichever is greater, for each type of coverage required by the rule. Self-insurance in amounts exceeding the above maximum may be permitted by the NYSE provided the member or member organization certifies to the satisfaction of the NYSE that it is unable to obtain greater bonding coverage, and agrees to reduce its self-insurance so as to comply with the above stated limits as soon as possible, and appropriate charges to capital are made pursuant to Exchange Act Rule 15c3–1. This provision also contains identical language to the NASD rule regarding net worth deductions for subsidiaries.

Proposed FINRA Rule 4360 would provide for an allowable deductible amount of up to 25 percent of the fidelity bond coverage purchased by a member. Any deductible amount elected by the firm that is greater than 10 percent of the coverage purchased by the member[8] would be deducted from the member's net worth in the calculation of its net capital for purposes of Exchange Act Rule 15c3–1.[9] Like the NASD and NYSE rules, if the member is a subsidiary of another FINRA member, this amount may be deducted from the parent's rather than the subsidiary's net worth, but only if the parent guarantees the subsidiary's net capital in writing.

4. Annual Review of Coverage

Consistent with NASD Rule 3020(c) and NYSE Rule 319.10, proposed FINRA Rule 4360 would require a member (including a firm that signs a multi-year insurance policy), annually as of the yearly anniversary date of the issuance of the fidelity bond, to review the adequacy of its fidelity bond coverage and make any required adjustments to its coverage, as set forth in the proposed rule. Under proposed FINRA Rule 4360(d), a member's highest net capital requirement during the preceding 12-month period, based on the applicable method of computing net capital (dollar minimum, aggregate indebtedness or alternative standard), would be used as the basis for determining the member's minimum required fidelity bond coverage for the succeeding 12-month period. The "preceding 12-month period" includes the 12-month period that ends 60 days before the yearly anniversary date of a member's fidelity bond. This would give a firm time to determine its required fidelity bond coverage by the anniversary date of the bond.

Proposed FINRA Rule 4360 would allow a member that has only been in business for one year and elected the aggregate indebtedness ratio for calculating its net capital requirement to use, solely for the purpose of determining the adequacy of its fidelity bond coverage for its second year, the 15 to 1 ratio of aggregate indebtedness to net capital in lieu of the 8 to 1 ratio (required for broker-dealers in their first year of business) to calculate its net capital requirement. Notwithstanding the above, such member would not be permitted to carry less minimum fidelity bond coverage in its second year than it carried in its first year.

5. Exemptions

Based in part on NASD Rule 3020(a), proposed FINRA Rule 4360 would exempt from the fidelity bond requirements members in good standing with a national securities exchange that maintain a fidelity bond subject to the requirements of such exchange that are equal to or greater than the requirements set forth in the proposed rule. Additionally, consistent with NYSE Rule Interpretation 319/01, proposed FINRA Rule 4360 would continue to exempt from the fidelity bond requirements any firm that acts solely as a Designated Market Maker ("DMM"),[10] floor broker or registered floor trader and does not conduct business with the public.

Proposed FINRA Rule 4360 would not maintain the exemption in NASD Rule 3020(e) for a one-person firm.[11] Historically, a sole proprietor or sole stockholder member was excluded from the fidelity bond requirements based upon the assumption that such firms were one-person shops and, therefore, could not obtain coverage for their own acts. FINRA has determined that sole proprietors and sole stockholder firms can and often do acquire fidelity bond coverage, even though it is currently not required, since all claims (irrespective of firm size) are likely to be paid or denied on a facts-and-circumstances basis. Also, certain coverage areas of the fidelity bond benefit a one-person shop (*e.g.,* those covering customer property lost in transit).

[8] FINRA notes that a member may elect, subject to availability, a deductible of less than 10 percent of the coverage purchased.

[9] NASD Rule 3020 bases the deduction from net worth for an excess deductible on a firm's minimum required coverage, while proposed FINRA Rule 4360 would base such deduction from net worth on coverage *purchased* by the member.

[10] *See* Exchange Act Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (Order Approving File No. SR–NYSE–2008–46). In this rule filing, the role of the specialist was altered in certain respects and the term "specialist" was replaced with the term "Designated Market Maker."

[11] A one-person member (that is, a firm owned by a sole proprietor or stockholder that has no other associated persons, registered or unregistered) has no "employees" for purposes of NASD Rule 3020, and therefore such a firm currently is not subject to the fidelity bonding requirements. Conversely, a firm owned by a sole proprietor or stockholder that has other associated persons has "employees" for purposes of NASD Rule 3020, and currently is, and will continue to be, subject to the fidelity bonding requirements.

III. Summary of Comments

The Commission received three comment letters in response to the proposed rule change addressing different aspects of the proposal.[12] FINRA submitted a response to these comment letters.[13]

A. Elimination of the Exemption in NASD Rule 3020 for Sole Proprietors and Sole Stockholders

All three commenters oppose the proposed elimination of the exemption from the fidelity bond requirements in NASD Rule 3020 for sole proprietors and sole stockholders.[14] One commenter believes that it is irresponsible to require one-person shops to maintain a fidelity bond that would provide little, if any, true coverage and that a one-person shop should be allowed to decide if they want to self-insure in other areas that would not invoke the alter-ego concept.[15] Another commenter requests that the proposed rule change not be approved without an exemption for sole proprietors and sole stockholders and notes that maintaining a fidelity bond will be a great financial burden for small firms.[16] The third commenter agrees with the premise that sole proprietors and sole stockholders may rely on certain Insuring Agreements in a fidelity bond.[17] However, two commenters, including the third commenter referenced above, are concerned that Insuring Agreement A—Fidelity as required by the proposed rule, is not available in the market for a sole proprietor or sole stockholder because the sole owner is considered an alter-ego of the company and dishonesty of a sole owner cannot be underwritten prudently.[18] One commenter suggests language that would exclude sole proprietors and sole stockholders from Insuring Agreement A—Fidelity coverage and believes that the rule filing does not accurately describe Insuring Agreement A—Fidelity because it uses the term "malfeasance."[19]

In its response to comments, FINRA notes that a one-person member has no "employees" for purposes of the rule, and therefore such a firm currently is not subject to the fidelity bonding requirements.[20] However, a firm owned by a sole proprietor or stockholder that has other associated persons has "employees" for purposes of current NASD Rule 3020, and currently is, and will continue to be, subject to fidelity bonding requirements.[21] FINRA further disputes the claim that sole proprietors and sole stockholder firms cannot obtain fidelity bond coverage. Specifically, FINRA has determined that sole proprietors and sole stockholder firms can and do acquire fidelity bond coverage, even though it is not currently required under the NASD rule.[22]

FINRA further provides that Insuring Agreements B through F in the proposed rule are all premised on losses suffered by the insured based on the acts of another person; such persons do not have to be an "employee" of the firm and therefore sole proprietor and sole stockholder firms can obtain fidelity coverage through these agreements.[23] FINRA notes that the term "employee" currently is defined in the Securities Dealer Blanket Bond to include, among others, an officer or other employee of the insured, while employed in, at or by any of the insured's offices or premises, an attorney retained by the insured while performing legal services for the insured and any natural person performing acts coming with the scope of the usual duties of an officer or employee of the insured, including any persons provided by an employment contractor. FINRA believes that while a sole proprietor or sole stockholder may not have other associated persons or registered persons, it may have "employees" for purposes of a fidelity bond and therefore may benefit from Fidelity coverage.[24] FINRA believes that requiring all SIPC member firms, regardless of size, to maintain fidelity bond coverage promotes investor protection objectives and protects firms from unforeseen losses.

With respect to the comment that the rule filing inaccurately describes Insuring Agreement A—Fidelity by using the term "malfeasance," FINRA responds that the term "malfeasance" was used as part of a description of the purpose of the fidelity bond in general and does not aim to impose additional requirements beyond what is covered by the proposed rule.[25]

B. Requirement for Per Loss Coverage Without an Aggregate Limit of Liability

One commenter notes that the proposed rule change, which would require members to maintain fidelity bond coverage that provides for per loss coverage without an aggregate limit of liability, will significantly modify the Financial Institutional Form 14 Bond ("Form 14") by creating a competitive disadvantage to underwriters that do not offer this type of coverage.[26] The commenter further stated that only two underwriting firms offer this type of coverage and therefore the proposed rule change would increase costs to members.[27]

FINRA argues that a member's fidelity bond coverage should not include an aggregate limit of liability to prevent a member's coverage from being eroded by covered losses within the bond period.[28] FINRA further states that it was advised by industry representatives that Form 14 could be revised to provide this type of coverage and that it could be offered by a firm that offers the current Form 14.[29]

C. Proposed Changes to the Deductible Provision

One commenter opposes provision (c) in proposed FINRA Rule 4360 that would require a deduction from net capital in the case of certain deductible levels.[30] This commenter supported the increased maximum permissible deductible of 25% of the coverage purchased by a member, but believes that the net capital deduction that the broker-dealer would be required to take for any deductible greater than 10% of their fidelity bond limit could provide a strong disincentive for any firm to consider a higher deductible. The commenter believes that this could lead to higher premium costs for members.[31]

In response, FINRA notes the difference between the deduction linked to the current NASD rule and what is proposed. Specifically, the proposed rule eliminates the current concept of an "excess deductible" linked to a member's required *minimum* bond requirement and instead proposed Rule 4360 would only be subject to a deduction from net capital in the amount of any deductible over 10% of the coverage *purchased* by the member. Therefore, FINRA does not believe that the proposed deductible provision will result in a higher premium costs than the current rule. Rather, FINRA argues that the option for a deductible of up to 25% of the coverage purchased and any

[12] *See supra* note 4.

[13] *See* Letter from Erika L. Lazar, Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated February 23, 2010 ("FINRA Letter").

[14] *See* Kramer, SFAA and Travelers.

[15] *See* Travelers.

[16] *See* Kramer.

[17] *See* SFAA.

[18] *See* SFAA and Travelers.

[19] *See* SFAA.

[20] *See* FINRA Letter.

[21] *Id.*

[22] *See* Notice, *supra* note 3; *see also* FINRA Letter.

[23] *See* FINRA Letter.

[24] *Id.*

[25] *Id.*

[26] *See* Travelers. Furthermore, Travelers argues that this proposed change would remove the industry standard aggregate limit of liability.

[27] *Id.*

[28] *See* FINRA Letter.

[29] *Id.*

[30] *See* Travelers.

[31] *Id.*

deductible amount elected by the member that is greater than 10% of the coverage purchased must be deduced from the member's net worth in the calculation of its net capital for purposes of Exchange Act Rule 15c3–1.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[32] In particular, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) of the Act,[33] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that FINRA adequately addressed the comments raised in response to the notice of this proposed rule change.

The Commission believes that FINRA's proposed Rule 4360 (Fidelity Bond) will update and clarify the requirements governing fidelity bonds for adoption in the Consolidated FINRA Rulebook. The Commission believes that the proposed requirements of FINRA Rule 4360, including, but not limited to, requiring each member that is required to join SIPC to maintain blanket fidelity bond coverage, increasing the minimum requirement fidelity bond coverage and maintaining a fidelity bond that provides for per loss coverage without an aggregate limit of liability promotes investor protection by protecting firms from unforeseen losses.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–FINRA–2010–059) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4690 Filed 3–1–11; 8:45 am]

BILLING CODE 8011–01–P

[32] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78o–3(b)(6).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63962; File No. SR–MSRB–2011–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Amendments to Rule A–15, on Notification To Board of Termination of Municipal Securities Activities and Change of Name or Address

February 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The MSRB has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing a proposed rule change relating to the notification requirements in the event of a change in status of a broker, dealer, municipal securities dealer, or municipal advisor, consisting of amendments to Rule A–15, on Notification to Board of Termination of Municipal Securities Activities and Change of Name or Address.

The text of the proposed rule change is available on the MSRB's website at *http://www.msrb.org/Rules-and-Interpretations/SEC–Filings/2011–Filings.aspx*, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 Board 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 purposes of the proposed rule change are: (i) To extend the provisions of Rule A–15 to municipal advisors; and (ii) to expand the circumstances under which the MSRB must be notified to include: (A) a bar or suspension from engaging in municipal securities activities or municipal advisory activities by the appropriate regulatory agency, judicial authority, or otherwise; and (B) in the case of a broker, dealer, or municipal securities dealer, expulsion or suspension from membership or participation in a national securities exchange or registered securities association. Although existing Rule A–15 establishes a procedure for notification of a change in status with respect to brokers, dealers and municipal securities dealers, it does not apply to municipal advisors. Further, existing Rule A–15 does not provide for notification to the Board in the event of disbarment or suspension by regulatory agencies or judicial authorities or otherwise, or, with respect to brokers, dealers and municipal securities dealers, expulsion or suspension from membership or participation in a national securities exchange or registered securities association. The proposed rule change (i) adds municipal advisors to the entities subject to the rule; (ii) requires notification if (A) a broker, dealer, municipal securities dealer, or municipal advisor has been barred or suspended from engaging in municipal securities activities or municipal advisory activities by the appropriate regulatory agency, judicial authority or otherwise; and (B) if a broker, dealer or municipal securities dealer has been expelled or suspended from membership or participation in a national securities exchange or registered securities association.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Act, which provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b4–(f)(6).

to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors;

and, in particular, Section 15B(b)(2)(C) of the Act, which provides, in pertinent part, that MSRB rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest * * *.

The proposed rule change is consistent with Section 15B(b)(2) and Section 15B(b)(2)(C) of the Act because it will assist the Board in monitoring which brokers, dealers, municipal securities dealers, and municipal advisors should no longer be listed as MSRB registrants and, accordingly, will aid investors, municipal entities, obligated persons, and the public in their choice of brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(2)(L)(iv) of the Act requires that rules adopted by the Board

not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The proposed rule change does not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons and for the robust protection of investors against fraud. Rule A–15, as amended by the proposed rule change, requires that municipal advisors submit a notice indicating their change in status. The MSRB expects that municipal advisors will need no more than 30 minutes to complete the notification required by the proposed rule change, and such notice may be submitted by email or fax, as well as by regular mail or overnight delivery service. The MSRB will have staff ready to assist municipal advisors should they have any questions. The proposed rule change does not impose any additional fee on municipal advisors but only requires payment of any amounts otherwise due and owing under other rules of the Board. Any burden on municipal advisors is *de minimis.* The proposed rule change is necessary to aid the Board in monitoring which brokers, dealers, municipal securities dealers, and municipal advisors should no longer be listed as MSRB registrants and, accordingly, will aid investors, municipal entities, obligated persons, and the public by providing information to inform their choice of broker, dealer, municipal securities dealer, or municipal advisor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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, since it would apply equally to all brokers, dealers, municipal securities dealers and municipal advisors.

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSRB represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act [5] thereunder, because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after filing or such shorter time as the Commission may designate consistent with the protection of investors and the public interest.[6]

The MSRB provided the required written notice of its intention to file the proposed rule change to the Commission on February 3, 2011, and the proposed rule change will become operative on March 17, 2011, which is more than 30 days after the filing of the proposed rule change.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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.[7]

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–MSRB–2011–05 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–MSRB–2011–05. 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 Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[7] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2011–05 and should be submitted on or before March 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4692 Filed 3–1–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63950; File No. SR–MSRB–2011–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change To Amend the MSRB Short-term Obligation Rate Transparency ("SHORT") Subscription Service

February 23, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2011, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the MSRB. 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 MSRB is filing with the Commission a proposed rule change to amend the MSRB's Short-term Obligation Rate Transparency subscription service to provide subscribers with additional information as well as documents. The MSRB has requested that the proposed rule change be made effective on May 16, 2011.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Fillings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Short-term Obligation Rate Transparency ("SHORT") System is a facility of the MSRB for the collection and dissemination of information about securities bearing interest at short-term rates. Rule G–34(c), on variable rate security market information, currently requires certain dealers to report to the SHORT System interest rates and descriptive information about Auction Rate Securities ("ARS") and Variable Rate Demand Obligations ("VRDOs"). All reported information is disseminated from the SHORT System to subscribers pursuant to the MSRB SHORT subscription service [3] and is posted to the MSRB's Electronic Municipal Market Access ("EMMA") web portal pursuant to the EMMA short-term obligation rate transparency service.

On August 20, 2010, the Commission approved changes to Rule G–34(c) that will increase the information dealers are required to report to the SHORT System. This rule change will add to the SHORT System documents that define auction procedures and interest rate setting mechanisms for ARS and liquidity facilities for VRDOs, information about orders submitted for an ARS auction, and additional information about VRDOs.[4] To provide subscribers with access to these additional items of information and documents, the proposed rule change would amend the SHORT subscription service to include the additional information and documents as well as an ARS "bid to cover" ratio that would be computed by the SHORT System.

[3] The SHORT subscription service became effective September 30, 2010. *See* Securities Exchange Act Release No. 34–62993, September 24, 2010 (File No. SR–MSRB–2010–06).

[4] *See* Securities Exchange Act Release No. 62755, August 20, 2010 (File No. SR–MSRB–2010–02).

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The amendments to the SHORT subscription service would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The subscription service would make the additional information and documents collected by the SHORT System available to market participants for re-dissemination and for use in creating value-added products and services. Such re-dissemination and third-party use would provide market participants, including investors and the general public, additional avenues for obtaining the information collected by the SHORT System and would make additional tools available for making well-informed investment decisions. Broad access to the information and documents collected by the SHORT System, in addition to the public access through the EMMA web portal, should further assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about Auction Rate Securities and Variable Rate Demand Obligations.

Furthermore, broader re-dissemination and third-party use of the information and documents collected by the SHORT System should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities (including any changes thereto).

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would make the information and documents collected by the SHORT System available to all persons on an equal and non-discriminatory basis. The information and documents provided through the subscription service would be available to all subscribers simultaneously with the availability of the information and documents through the EMMA Web portal. In addition to making the information and documents available for free on the EMMA Web portal to all members of the public, the MSRB would make the information and documents collected by the SHORT System available by subscription on an equal and non-discriminatory basis without imposing restrictions on subscribers from, or imposing additional charges on subscribers for, re-disseminating such information and documents or otherwise adding value-added services and products based on such information and documents on terms determined by each subscriber.[5]

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–MSRB–2011–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2011–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2011–04 and should be submitted on or before within March 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4583 Filed 3–1–11; 8:45 am]

BILLING CODE 8011–01–P

[5] The MSRB notes that subscribers may be subject to proprietary rights of third parties in information provided by such third parties that is made available through the subscription.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63959; File No. SR–NASDAQ–2011–031]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the NASDAQ Order Imbalance Snapshot

February 24, 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 February 23, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change regarding the NASDAQ Order Imbalance Snapshot, a data feed of electronic messages for newswire providers to monitor the NASDAQ Opening Cross, Closing Cross, IPO Cross and Halt Cross. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ facilitates participation in electronic auctions by disseminating the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Order Imbalance Indicator, a data feed containing information regarding the status of the NASDAQ book just prior to a crossing auction. The data contained in the Order Imbalance Indicator is set forth in NASDAQ Rules governing the crosses for the Opening Cross (Rule 4752), Halt/IPO Cross (Rule 4753), and Closing Cross (Rule 4754).

The NASDAQ Order Imbalance Snapshot ("NOIS") is a separate service that provides a snapshot version of the Order Imbalance Indicator that is streamlined and filtered for use by newswire services. Rather than providing continuous order imbalance data, NOIS provides the data for certain stocks at selected time intervals in a format designed to optimize systems used by newswire providers. In other words, NOIS contains a subset of information already approved to be disseminated via the Order Imbalance Indicator.

Specifically, for the NASDAQ Opening and Closing Crosses, NOIS disseminates messages only for exchange-listed securities that show an imbalance shares amount equal to or more than 50,000 shares. For those messages NOIS disseminates, the message includes all imbalance information set forth in the Order Imbalance Indicator set forth in NASDAQ Rule 4752(a), 4753(a), and 4754(a). NOIS disseminates messages for securities listed on any national securities exchange, not just those listed on NASDAQ.

For NASDAQ IPO Crosses, NOIS messages are disseminated approximately 3 minutes and 13 minutes after the "Trading Action—Quote Resumption" message, which signals imminent launch of trading, is disseminated for the issue. NOIS will also disseminate a message if the quotation window is extended for the IPO security. There is no share size filter for the IPO cross. NASDAQ currently disseminates IPO Cross messages only for NASDAQ-listed securities.

For the NASDAQ Halt Cross, which NASDAQ uses to release securities subject to a regulatory trading halt or single security trading pause, NOIS messages will be disseminated approximately 3 minutes after the "Trading Action—Quote resumption" message is transmitted for the issue. NOIS will also disseminate a message if the quotation window is extended for the halted or paused security. There is no share size filter for the Halt cross. For the Halt Cross, NOIS disseminates messages for NASDAQ-listed issues only.

NOIS data elements are disseminated to newswires for further dissemination to newswire subscribers. Therefore, the NOIS feed is not directly actionable by investors for quoting, order entry or trade execution.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general and with Section 6(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Nasdaq believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of more useful proprietary data and also by clarifying its availability to market participants.

Additionally, NASDAQ is making a voluntary decision to make this data available. NASDAQ is not required by the Exchange Act in the first instance to make the data available, unlike the best bid and offer which must be made available under the Act. NASDAQ chooses to make the data available as proposed in order to improve market quality, to attract order flow, and to increase transparency. Once this filing becomes effective, NASDAQ will be required to continue making the data available until such time as NASDAQ changes its rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by self-regulatory organizations, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to NASDAQ only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–031 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–031. 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–NASDAQ–2011–031 and should be submitted on or before March 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4691 Filed 3–1–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63958; File No. SR–Phlx–2011–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Rebates and Fees for Adding and Removing Liquidity in Select Symbols

February 24, 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 February 17, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the options in Section I of the Exchange's Fee Schedule titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols."

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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 the proposed rule change is to amend the list of symbols[3] applicable to the Exchange's Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I of the Fee Schedule in order to attract additional order flow to the Exchange.

The Exchange displays a list of Select Symbols in its Fee Schedule at Section I, "Rebates and Fees for Adding and Removing Liquidity in Select Symbols," that are subject to the rebates and fees in that section. Among those symbols is BP p.l.c. Common Stock ("BP"). The Exchange is proposing to remove BP from the list of Select Symbols in Section I. The Exchange is also proposing to add PowerShares DB US Dollar Index Bullish ("UUP") to the list of Select Symbols in Section I.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] 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 it is reasonable to remove BP from its list of Select Symbols and add UUP to its list of Select Symbols to attract additional order flow to the Exchange.

The Exchange believes that it is equitable to amend the list of Select Symbols by removing BP and adding UUP because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Fee Schedule.

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.

[3] The symbols ("Select Symbols") are listed in Section I of the Fee Schedule.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] 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–2011–24 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–2011–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–24, and should be submitted on or before March 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4689 Filed 3–1–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63957; File No. SR–Phlx–2011–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Dividend and Merger Strategies

February 24, 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 February 14, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to clarify the definitions of dividend and merger strategies in Section II of its Fee Schedule titled, "Equity Options Fees."

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the definitions of dividend and merger strategies in Section II of the Fee Schedule titled "Equity Options Fees," so that the applicability of equity option transaction charges and caps [3] are clear to members.

The Exchange provides a definition of a dividend strategy in Section II of its Fee Schedule. The Exchange defines a dividend strategy, along with other strategies, to provide members with information necessary to calculate the combined fee cap on equity option transaction charges for dividend, merger and short stock interest strategies. The Exchange defines a dividend strategy as follows "* * *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."

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Equity options transaction charges for Specialists, Registered Options Traders, Streaming Quote Traders, Remote Streaming Quote Traders, Firms and Broker-Dealers are capped at $1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. Equity option transaction charges for dividend, merger and short stock interest strategies combined are capped at $25,000 per member organization per month when such members are trading in their own proprietary accounts.

The Exchange proposes to amend this dividend strategy definition to provide clarity with respect to the text "prior to the date." The Exchange proposes to amend the definition to state, "transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed *immediately* prior to the date on which the underlying stock goes ex-dividend." The Exchange believes that this language would clarify the timing of such a dividend strategy. The Exchange is proposing to make clear that such transactions must occur immediately prior to the date on which the underlying stock goes ex-dividend to meet the definition of a dividend strategy. The Exchange would interpret the proposed term "immediately" to mean the first business day prior to the date on which the underlying stock goes ex-dividend.

Similarly, the Exchange provides a definition of a merger strategy in Section II of its Fee Schedule. The Exchange defines a merger strategy, along with other strategies, to provide members with information necessary to calculate the combined fee cap on equity option transaction charges for dividend, merger and short stock interest strategies. The Exchange defines a merger strategy as follows "* * *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."

The Exchange proposes to amend this merger strategy definition to provide clarity with respect to the text "prior to the date." The Exchange proposes to amend the definition to state, "transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed *immediately* prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock." The Exchange believes that this language would clarify the timing of such a merger strategy. The Exchange is proposing to make clear that such transactions must occur immediately prior to the date on which the shareholders of record are required to elect their respective form of consideration to meet the definition of a merger strategy. The Exchange would interpret the proposed term "immediately" to mean the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] 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 it is reasonable to amend the definitions of dividend and merger strategies to provide members with a definition that is clear and unambiguous. In addition, the Exchange believes that the amended definitions would provide members clear guidance on the applicability of the equity option transaction charges and the available caps.

The Exchange believes that the proposed amendments are equitable because the proposed new definitions would apply equally to all members transacting dividend or merger strategies. The Exchange would uniformly apply the definitions to all members who transacted such dividend and/or merger strategies when assessing equity option transaction charges and applying caps.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] 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–2011–20 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–2011–20. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–20, and should

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

be submitted on or before March 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4688 Filed 3–1–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12479 and #12480]

New York Disaster #NY–00102

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–1957–DR), dated 02/18/2011.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 12/26/2010 through 12/27/2010.

Effective Date: 02/18/2011.

Physical Loan Application Deadline Date: 04/19/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 11/18/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/18/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Nassau, Suffolk.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12479B and for economic injury is 12480B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–4561 Filed 3–1–11; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS420]

WTO Dispute Settlement Proceeding Regarding United States—Anti Dumping Measures on Corrosion-Resistant Carbon Steel Flat Products From Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on January 31, 2011, the Republic of Korea requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") concerning antidumping measures regarding corrosion-resistant carbon steel flat products from Korea. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS420/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 1, 2011, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2011–0001. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Leigh Bacon, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–5859.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by Korea

On January 31, 2011, Korea requested consultations concerning antidumping measures regarding corrosion-resistant carbon steel flat products from Korea. Korea challenges what it describes as the "use of the practice of zeroing negative dumping margins in administrative reviews, sunset reviews, and liquidations of antidumping duties with and without reviews, concerning the case of corrosion-resistant carbon steel flat products from Korea," as well as "the imposition of cash deposit requirements and the final assessment of antidumping duties pursuant thereto" and "the ongoing conduct reflected by the use of the zeroing methodology in successive proceedings in that case."

Korea also states that it would like to raise the following "matters": (1) The Tariff Act of 1930, in particular, sections 731, 751, 752, 771(35)(A) and (B), and 777A(c) and (d); (2) the Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. I; (3) implementing regulations of the Department of Commerce, 19 CFR section 351, in particular, sections 351.212(b) and (c), 351.218, and 351.414; (4) the Import Administration Antidumping Manual (1997 edition), including the computer program(s) to which it refers; (5) the Department of Commerce Policy Bulletin 98.3, "Policies Regarding the Conduct of Five-year ('Sunset') Reviews of Antidumping and Countervailing Duty Orders" ("Sunset Policy Bulletin"), 63 FR 18871 (16 April 1998); (6) "the general procedures and methodology employed by the United States for determining dumping margins in administrative reviews, sunset reviews, and duty assessment determinations"; and (7) "the general procedures and methodology

[7] 17 CFR 200.30–3(a)(12).

employed by the United States, in sunset reviews, for determining whether revocation of antidumping orders would be likely to lead to continuation or recurrence of dumping within a reasonably foreseeable time."

Korea alleges inconsistencies with Articles VI:1 and VI:2 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Articles 1, 2.1, 2.4, 2.4.2, 3, 5.8, 9.1, 9.3, 11, 18.3, and 18.4 of the *Agreement on Implementation of Article VI of the GATT 1994,* and Article XVI:4 of the WTO Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2011–0001. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2011–0001 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *http://www.regulations.gov* website, please consult the resources provided on the website by clicking on "How to Use This Site" on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "*See* attached" in the "Type Comment and Upload File" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *http://www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the website of the World Trade Organization, *http://www.wto.org.* Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

Bradford L. Ward,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2011–4663 Filed 3–1–11; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2010 Public Transportation on Indian Reservations Program Project Selections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Award.

SUMMARY: The Federal Transit Administration (FTA) announces the selection of projects to be funded using Fiscal Year (FY) 2010 appropriations for the Tribal Transit Program, a program authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Section 3013(c).

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA regional Tribal Liaison, (Appendix) for application-specific information and issues. For general program information, contact Lorna R. Wilson, Office of Transit Programs, at (202) 366–2053, *e-mail: Lorna.Wilson@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION: The Tribal Transit Program (TTP) established by Section 3013(c) SAFETEA–LU, Public Law 109–49 (August 15, 2005), under 49 U.S.C. 5311(c) makes funds available to federally recognized Indian Tribes or Alaska Native villages, groups, or communities as identified by the Bureau of Indian Affairs (BIA) in the U.S. Department of the Interior for public transportation capital projects, operating costs and planning activities that are eligible costs under the Nonurbanized Area Formula Program (Section 5311).

Awards: A total of $15,074,963 million was made available for FY 2010 Tribal Transit program. This amount includes $74,963 in lapsing funds from previously funded projects. A total of 96 applicants requested $36.8 million for new transit services, enhancement or expansion of existing transit services, and planning studies including operational planning. FTA made project selections through a competitive process based on each applicant's responsiveness to the program evaluation criteria outlined in FTA's, May 13, 2010 **Federal Register** (75 FR 27114), Notice of Funding Availability: Solicitation for FY 2010 Tribal Transit Program. FTA also took into consideration the current status of previously funded TTP grantees. Because of the high demand, many applicants selected for funding will receive less funding than requested, which enables FTA to support an

increased number of meritorious applications. Where reduced funding was received, FTA has specified in the table of projects the scope that was funded. A total of 59 applications have been selected for funding. The projects selected will provide funding for transit planning studies and/or operational planning ($50,000); startup projects for new transit service ($2,747, 693); and for the operational expenses of existing transit services ($12,277,270).

Following publication of this Notice, an FTA regional tribal liaison will contact each applicant selected for funding to discuss each tribe's specific technical assistance needs.

In the event the contact information provided by your tribe in the application has changed, please contact your tribal liaison with the current information in order to expedite the grant award process.

Issued in Washington, DC, this 24th day of February, 2011.

Peter Rogoff,

Administrator.

Appendix—FTA Regional Offices and Tribal Transit Liaisons

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine—Mary E. Mello, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Phone: (617) 494–2055, Fax: (617) 494–2865, Regional Tribal Liaison(s): Laurie Ansaldi and Judi Molloy.

Region II—New York, New Jersey—Brigid Hynes-Cherin, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, Phone: (212) 668–2170, Fax: (212) 668–2136, Regional Tribal Liaison: Darin Allan.

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, DC, Letitia Thompson, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Phone: (215) 656–7100, Fax: (215) 656–7260. (NO TRIBES)

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico, Virgin Islands—Yvette G. Taylor, FTA Regional Administrator, 230 Peachtree St., N.W., Suite 800, Atlanta, GA 30303, Tel.: 404–865–5600, Fax: 404–865–5600, Regional Tribal Liaisons: Jamie Pfister and Tajsha LaShore.

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan—Marisol R. Simon, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606–5232, Phone: (312) 353–2789, Fax: (312) 886–0351, Regional Tribal Liaisons: Joyce Taylor and Angelica Salgado.

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma—Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Phone: (817) 978–0550, Fax: (817) 978–0575, Regional Tribal Liaison: Lynn Hayes.

Region VII—Iowa, Nebraska, Kansas, Missouri—Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, Phone: (816) 329–3920, Fax: (816) 329–3921, Regional Tribal Liaisons: Joni Roeseler and Cathy Monroe.

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah—Terry Rosapep, FTA Regional Administrator, 12300 West Dakota Avenue, Suite 310, Lakewood, CO 80228–2583, Phone: (720) 963–3300, Fax: (720) 963–3333, Regional Tribal Liaisons: Jennifer Stewart and David Beckhouse.

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam—Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 1650, San Francisco, CA 94105–1926, Phone: (415) 744–3133, Fax: (415) 744–2726, Regional Tribal Liaison: Eric Eidlin.

Region X—Washington, Oregon, Idaho, Alaska—Richard Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Phone: (206) 220–7954, Fax: (206) 220–7959, Regional Tribal Liaison: Bill Ramos.

BILLING CODE 4910–57–P

TABLE 1

TRIBAL TRANSIT PROJECT SELECTIONS

State	Applicant Name/Recipient	Discretionary Earmark ID	Project Description	Final Amount
AK	Native Village of Unalakleet	D2010-TRTR-001	Planning	$25,000
AK	Crooked Creek	D2010-TRTR-002	Operating - Continuation of existing services	$65,427
AK	Tetlin Tribe	D2010-TRTR-003	Operating - Continuation of existing services	$216,470
AK	Sitka Tribe of Alaska	D2010-TRTR-004	Operating - Continuation of existing services	$270,000
AZ	Tohono O'Odham Nation	D2010-TRTR-005	Start-Up Capital and Operating	$389,693
AZ	San Carlos Apache Tribe	D2010-TRTR-006	Operating - Continuation of existing services	$214,739
AZ	White Mountain Apache Tribe	D2010-TRTR-007	Start - Up Capital and Operating	$362,500
AZ	Navajo Transit System	D2010-TRTR-008	Start - Up Capital and Operating	$500,000
AZ	Cocopah Indian Tribe	D2010-TRTR-009	Operating - Continuation of existing services	$242,860
AZ	Yavapai Apache Nation	D2010-TRTR-010	Start- Up Capital and Operating	$325,500
AZ	Kaibab Paiute Tribal Transportation	D2010-TRTR-011	Capital - Purchase of three vehicles	$103,500
CA	Reservation Transportation Authority	D2010-TRTR-012	Operating - Continuation of existing services	$400,000
CA	Yurok Tribe	D2010-TRTR-013	Operating - Continuation of existing services	$155,940
CA	Susanville Indian tribe	D2010-TRTR-014	Operating - Continuation of existing services	$200,000
CA	Blue Lake Rancheria	D2010-TRTR-015	Operating - Continuation of existing services	$230,000
CO	Southern Ute Indian Tribe	D2010-TRTR-016	Operating - Continuation of existing services	$238,986
ID	Nez Perce	D2010-TRTR-017	Operating - Continuation of existing services	$250,000
MN	Red Lake Public Transit System	D2010-TRTR-018	Operating - Continuation of existing services	$439,284
MN	Bois Forte Reservation	D2010-TRTR-019	Operating - Continuation of existing services	$397,335
MS	Mississippi Band of the Choctaw	D2010-TRTR-020	Capital - IT equipment, GPS, computers, printers for new facility	$41,910
MT	Crow Nation Reservation	D2010-TRTR-021	Start-Up Capital and Operating	$500,000
MT	Northern Cheyenne	D2010-TRTR-022	Operating - Continuation of existing services	$362,000
MT	Chippewa Cree Tribe	D2010-TRTR-023	Operating - Continuation of existing services	$300,000
MT	Confederated Salish Kootenai	D2010-TRTR-024	Operating - Continuation of existing services	$235,000
NC	Eastern Band of Cherokee Indians	D2010-TRTR-025	Capital and Operating - Continuation funds for night routes, Salaries , and conversion van	$190,000

State	Applicant Name/Recipient	Discretionary Earmark ID	Project Description	Final Amount
ND	Standing Rock Public Transportation	D2010-TRTR-026	Operating - Continuation of existing services	$206,745
ND	Turtle Mountain Band of Chippewa Indians	D2010-TRTR-027	Operating - Continuation of existing services	$237,000
NE	Ponca tribe of Nebraska	D2010-TRTR-028	Operating - Continuation and expansion services	$151,554
NE	Santee Sioux Nation	D2010-TRTR-029	Operating - Continuation of existing services	$221,934
NM	Ohkay Owingey	D2010-TRTR-030	Operating - Continuation of existing services	$205,085
NM	Pueblo Santa Ana	D2010-TRTR-031	Operating - Continuation of existing services	$193,000
NM	Pueblo of San Idelfonso	D2010-TRTR-032	Operating - Continuation of existing services	$131,582
NM	Pueblo of Tesuque	D2010-TRTR-033	Operating - Continuation of existing and expanded services	$110,000
NV	Fallon Paiute Shoshone Tribe	D2010-TRTR-034	Start-Up Capital and Operating	$270,000
OK	Citizen Potawatomi Nation	D2010-TRTR-035	Operating - For existing and expanded service	$373,131
OK	The Miami Tribe of Oklahoma	D2010-TRTR-036	Operating - Continuation of existing services	$414,557
OK	Choctaw Nation of Oklahoma's	D2010-TRTR-037	Operating - Continuation of existing services	$165,583
OK	Ponca Tribe of OK	D2010-TRTR-038	Operating - Continuation of existing services	$174,367
OK	Cheyenne & Arapaho Tribes	D2010-TRTR-039	Operating - Continuation of existing services	$400,000
OK	The Chickasaw Nation	D2010-TRTR-040	Operating - Continuation of existing services	$350,000
OK	Cherokee Nation	D2010-TRTR-041	Operating - Continuation of existing services	$392,930
OK	Kiowa Tribe of Oklahoma	D2010-TRTR-042	Operating - Continuation of existing services	$331,972
OR	Confederated Tribes of Warm Springs	D2010-TRTR-043	Planning	$25,000
OR	Confederated Tribes of the Grand Ronde	D2010-TRTR-044	Operating - Continuation of existing and expanded services	$248,000
OR	Confederated Tribes of the Umatilla	D2010-TRTR-045	Operating - Continuation of existing services	$304,900
OR	Confederated Tribes of Siletz Indian	D2010-TRTR-046	Operating - Continuation of existing and expanded services	$164,000
SC	Catawba Indian Nation	D2010-TRTR-047	Operating - Continuation of existing services	$55,000
SD	Lower Brule	D2010-TRTR-048	Operating - Continuation of existing and expansion services	$230,668
SD	Cheyenne River Sioux Tribe	D2010-TRTR-049	Operating - Continuation of existing services	$200,000
SD	Oglala Sioux Tribe	D2010-TRTR-050	Operating - Continuation of existing services	$250,000
WA	Snoqualmie Indian Tribe	D2010-TRTR-051	Operating - Continuation of existing and expanded services	$329,013
WA	Stillaguamish Tribe of Indians	D2010-TRTR-052	Operating - Continuation of existing services	$186,000

State	Applicant Name/Recipient	Discretionary Earmark ID	Project Description	Final Amount
WA	Cowlitz Indian Tribe	D2010-TRTR-053	Operating - Continuation of existing and expanded services	$373,658
WA	Lummi Nation's	D2010-TRTR-054	Operating - Continuation of existing and expanded services	$260,510
WA	Swinomish Tribal Community	D2010-TRTR-055	Operating - Continuation of existing and expanded services	$245,310
WA	Spokane Tribe of Indians	D2010-TRTR-056	Operating - Expenses for Administrative Personnel for existing services	$141,733
WA	Tulalip Tribe's	D2010-TRTR-057	Operating - Continuation of existing services	$236,702
WI	Menominee Indian Tribe of Wisconsin	D2009-TRTR-09001	Operating - Continuation of existing services	$24,797
WI	Menominee Indian Tribe of Wisconsin	D2010-TRTR-059	Operating - Continuation of existing services	$414,088
WY	Shoshone and Arapahoe Tribes	D2010-TRTR-060	Start-Up Capital and Operating	$393,590
WY	Shoshone and Arapahoe Tribes	D2010-TRTR-11001	Start-Up Capital and Operating	$6,410
			Total	$15,074,963

[FR Doc. 2011–4569 Filed 3–1–11; 8:45 am]

BILLING CODE 4910–57–C

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0015]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HO–D–DOE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0015 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before April 1, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0015. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HO–D–DOE is:

Intended Commercial Use of Vessel: "This boat will be used for sportfishing/charters."

Geographic Region: "New Jersey, North Carolina, Florida."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 14, 2011.

Christine Gurland,

Secretary, Maritime Secretary.

[FR Doc. 2011–4584 Filed 3–1–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0013]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ANDANTE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation,

as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0013 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 1, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0013. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE, Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ANDANTE is:

Intended Commercial Use of Vessel: "Part time un-inspected charter operation focusing on daytime tours, dinner cruises, and sightseeing in the Puget Sound area."

Geographic Region: "Washington, Alaska."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.
Dated: February 14, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–4588 Filed 3–1–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0018]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SEAL.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0018 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before April 1, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0018. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SEAL is:

Intended Commercial Use of Vessel: "1–5 week sailing trips with generally 4 passengers, less than 13 weeks charter per year. These trips will be in remote regions (Alaska, Maine), with transient work in other states en route or on delivery."

Geographic Region: "Alaska, Maine, New Hampshire: sailboat chartering, usually 4 passengers. Rare transient passages (estimated 1 trip through the route every 3–5 years): California, Oregon, Washington, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administration.
Dated: February 14, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–4582 Filed 3–1–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0012]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel COMFORT ZONE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0012 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before April 1, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0012. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel COMFORT ZONE is:

Intended Commercial Use of Vessel: "Passenger service (charters), and some sport fishing only for fun NOT sales of fish."

Geographic Region: "California."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.
Dated: February 14, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–4578 Filed 3–1–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0014]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SLOW HAND.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0014 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before April 1, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0014. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SLOW HAND is:

Intended Commercial Use of Vessel: "small charters—sunset cruises."

Geographic Region: "Florida."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 14, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–4572 Filed 3–1–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0016]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MARIPOSA.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0016 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084, April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before April 1, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0016. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MARIPOSA is:

Intended Commercial Use of Vessel: "Passenger charters."

Geographic Region: "California."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 14, 2011.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2011–4581 Filed 3–1–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 30 foreign individuals and 44 foreign entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182). In addition, OFAC is publishing the name of one U.S. entity that has been identified as blocked property pursuant to the Kingpin Act.

DATES: The designation by the Director of OFAC of 30 foreign individuals and 44 foreign entities and the identification of one U.S. entity as blocked property listed in this notice pursuant to section 805(b) of the Kingpin Act is effective on February 23, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property

and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On February 23, 2011, the Director of OFAC designated 30 foreign individuals and 44 foreign entities whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act. In addition, the Director of OFAC also identified one U.S. entity as blocked property pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of these designees is as follows:

Foreign Individuals

1. ALVAREZ ZEPEDA, Alfredo (a.k.a. ONTIVEROS RIOS, Gabino; a.k.a. RODRIGO ALVAREZ, Sacarias), Boulevard Jesus Kumate Rodriguez, Kilometro 2 Edificio 2, Colonia Rincon del Valle, Culiacan, Sinaloa C.P. 80155, Mexico; C. Paloma 903, Col. Fatima, Durango, Durango C.P. 34080, Mexico; Calle Loc Cospita S/N, Colonia Loc Cospita, Culiacan, Sinaloa C.P. 80000, Mexico; Colonia San Jose del Barranco, Badiraguato, Sinaloa, Mexico; DOB 12 Sep 1977; alt. DOB 19 Feb 1981; POB Culiacan, Sinaloa, Mexico; alt. POB Vicente Guerrero, Durango, Mexico; C.U.R.P. OIRG810219HSLNSB09 (Mexico); alt. C.U.R.P. ROAS770912HDGDLC02 (Mexico); Credencial electoral RDALSC77091210H700 (Mexico); R.F.C. OIRG810219GGA (Mexico) (individual) [SDNTK]
2. BASTO DELGADO, Irma Mery, c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o CUBICAFE S.A., Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; DOB 5 Apr 1967; Cedula No. 20904590 (Colombia) (individual) [SDNTK]
3. CIFUENTES OSORIO, Jorge Andres, c/o BIO FORESTAL S.A., Medellin, Colombia; c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o GANADERIA LA SORGUITA S.A., Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o INVERSIONES CIFUENTES Y CIA. S. EN C., Medellin, Colombia; c/o PARQUES TEMATICOS S.A., Medellin, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; Carrera 48B No. 10 Sur-76, Medellin, Colombia; DOB 29 Mar 1985; POB Medellin, Colombia; Cedula No. 80796876 (Colombia) (individual) [SDNTK]
4. CIFUENTES VILLA, Dolly de Jesus, c/o C.I. GLOBAL INVESTMENTS S.A., Medellin, Colombia; c/o CIFUENTES URIBE Y COMPANIA S.C.S., Medellin, Colombia; c/o ECOVIVERO EL MATORRAL E.U., Medellin, Colombia; c/o ROBLE DE MINAS S.A., Medellin, Colombia; Calle 36AA Sur No. 26A–35, Medellin, Colombia; DOB 14 Jun 1964; Cedula No. 43020313 (Colombia) (individual) [SDNTK]
5. CIFUENTES VILLA, Hector Mario, c/o C.I. GLOBAL INVESTMENTS S.A., Medellin, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o CUBI CAFE CLICK CUBE MEXICO, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o INVERSIONES CIFUENTES Y CIA. S. EN C., Medellin, Colombia; c/o ROBLE DE MINAS S.A., Medellin, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; DOB 28 Nov 1964; POB Medellin, Colombia; Cedula No. 71653530 (Colombia); Passport AG048125 (Colombia) (individual) [SDNTK]
6. CIFUENTES VILLA, Hildebrando Alexander (a.k.a. CIFUENTES VILLA, Alex), c/o ROBLE DE MINAS S.A., Medellin, Colombia; Calle 16C Sur No. 42–70, Medellin, Colombia; DOB 18 Jan 1968; POB Medellin, Colombia; C.U.R.P. CIVH680118HNEFLL07 (Mexico); Cedula No. 71695565 (Colombia) (individual) [SDNTK]
7. CIFUENTES VILLA, Jorge Milton (a.k.a. LOPEZ SALAZAR, Elkin de Jesus), c/o BIO FORESTAL S.A., Medellin, Colombia; c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o C.I. METALURGIA EXTRACTIVA DE COLOMBIA S.A.S., Bogota, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o CUBICAFE S.A., Bogota, Colombia; c/o CUBI CAFE CLICK CUBE MEXICO, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o DESARROLLO MINERO RESPONSABLE C.I. S.A.S., Bogota, Colombia; c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o GANADERIA LA SORGUITA S.A., Medellin, Colombia; c/o FUNDACION OKCOFFEE COLOMBIA, Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o FUNDACION SALVA LA SELVA, Bogota, Colombia; c/o GANADERIA LA SORGUITA S.A., Medellin, Colombia; c/o GESTORES DEL ECUADOR GESTORUM S.A., Quito, Ecuador; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o INVERSIONES CIFUENTES Y CIA. S. EN C., Medellin, Colombia; c/o LE CLAUDE, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o OPERADORA NUEVA GRANADA, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o LINEA AEREA PUEBLOS AMAZONICOS S.A.S., Bogota, Colombia; c/o PARQUES TEMATICOS S.A., Medellin, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; c/o RED MUNDIAL INMOBILIARIA, S.A. DE C.V., Huixquilucan, Estado de Mexico, Mexico; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; Avenida Carrera 9 No. 113–52 Of. 401, Bogota, Colombia; Calle 6 No. 33–29 Apto. 801, Medellin, Colombia; Calle 74 No. 10–33 Apto. 806, Bogota, Colombia; Calle Blas Pascal No. 106, Colonia Los Morales, Delegacion Miguel Hidalgo, Mexico City, Distrito Federal C.P. 11510, Mexico; Calle Eje J No. 999 Pasaje Santa Fe, Departamento No. 301, Colonia Ciudad Santa Fe, Delegacion Alvaro Obregon, Mexico City, Distrito Federal C.P. 01210,

Mexico; Camino del Remanso, No. 80 A, Planta Baja, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Camino del Remanso No. 80 Interior 2, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Carrera 8 No. 10–56 Of. 201, Cali, Colombia; Carrera 68D No. 25–10, Lote 41 E/S Terminal, Bogota, Colombia; Carrera 68D No. 25B–86 Of. 504, Bogota, Colombia; Miguel Schultz No. 127, Colonia San Rafael, Delegacion Cuauhtemoc, Mexico City, Distrito Federal C.P. 06470, Mexico; DOB 13 May 1965; alt. DOB 13 Apr 1968; POB Medellin, Colombia; alt. POB Marinilla, Antioquia, Colombia; C.U.R.P. CIVJ650513HNEFLR06 (Mexico); Cedula No. 7548733 (Colombia); alt. Cedula No. 70163752 (Colombia); alt. Cedula No. 172489729–1 (Ecuador); Matricula Mercantil No 181301–1 Cali (Colombia); Matricula Mercantil No 405885 Bogota (Colombia); Passport AL720622 (Colombia); R.F.C. CIVJ650513LJA (Mexico) (individual) [SDNTK]

8. CIFUENTES VILLA, Lucia Ines, c/o C.I. GLOBAL INVESTMENTS S.A., Medellin, Colombia; c/o BIO FORESTAL S.A., Medellin, Colombia; c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o GANADERIA LA SORGUITA S.A., Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o PARQUES TEMATICOS S.A., Medellin, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; c/o ROBLE DE MINAS S.A., Medellin, Colombia; c/o TRANSPORTADORA Y COMERCIALIZADORA SYSTOLE S.A.S., Envigado, Antioquia, Colombia; Carrera 41A No. 22 Sur-87, Envigado, Antioquia, Colombia; DOB 4 Nov 1956; POB Yolombo, Antioquia, Colombia; Cedula No. 32524640 (Colombia) (individual) [SDNTK]

9. CIFUENTES VILLA, Teresa de Jesus (a.k.a. CIFUENTES VILLA, Maria Teresa), c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o RED MUNDIAL INMOBILIARIA, S.A. DE C.V., Huixquilucan, Estado de Mexico, Mexico; c/o ROBLE DE MINAS S.A., Medellin, Colombia; Avenida Xochilt No. 4262–10, Colonia Prados Tepeyac, Zapopan, Jalisco C.P. 45050, Mexico; Privada Paseo de las Montanas No. 100, Colonia Club de Golf Santa Anita, Tlacumulco de Zuniga, Jalisco C.P. 45640, Mexico; DOB 13 Jun 1953; POB Medellin, Colombia; Cedula No. 32505252 (Colombia); C.U.R.P. CIVT530613MNEFLR00 (Mexico); Passport AJ111604 (Colombia); R.F.C. CIVT530613DI0 (Mexico) (individual) [SDNTK]

10. FLOREZ SEPULVEDA, Marco Tulio, Calle 49B No. 74–44 Apto. 401, Medellin, Colombia; DOB 8 Apr 1962; Cedula No. 70300929 (Colombia) (individual) [SDNTK]

11. GALLEGO MARIN, Fabian Rodrigo, c/o IGA LTDA., Itagui, Antioquia, Colombia; c/o RUTA 33 MOTOCICLETAS Y ACCESORIOS LTDA., Medellin, Colombia; Calle 79A Sur No. 46–53, Sabaneta, Antiqouia, Colombia; DOB 25 Aug 1967; Cedula No. 98522962 (Colombia) (individual) [SDNTK]

12. GOMEZ ORTIZ, David, Calle 20 No. 21–54, Pasto, Narino, Colombia; c/o GESTORES DEL ECUADOR GESTORUM S.A., Quito, Ecuador; Avenida de los Estudiantes No. 21–54, Pasto, Narino, Colombia; DOB 14 Aug 1977; POB Pasto, Narino, Colombia; Cedula No. 98398142 (Colombia); alt. Cedula No. 171984116–3 (Ecuador) (individual) [SDNTK]

13. GOMEZ PIQUERAS, Jose Luis, c/o LINEAS AEREAS ANDINAS LINCANDISA S.A., Quito, Ecuador; c/o OBRAS Y PROYECTOS PIQUEHERVA S.L., Madrid, Spain; Calle San Jose, No. 20, Urbanizacion El Berrocal I y II, El Boalo, Mataelpino, Madrid, Spain; DOB 25 May 1941; POB Barcelona, Spain; Passport BC045629 (Spain); Tax ID No. 02681293–E (Spain) (individual) [SDNTK]

14. GOMEZ ZULUAGA, Pablo Alberto, c/o C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A., Bogota, Colombia; c/o LINEA AEREA PUEBLOS AMAZONICOS S.A.S., Bogota, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; Carrera 91A No. 40–63, Medellin, Colombia; DOB 20 Jun 1967; Cedula No. 71685966 (Colombia) (individual) [SDNTK]

15. GONZALEZ JARAMILLO, Juan Fernando, c/o BIO FORESTAL S.A., Medellin, Colombia; c/o ECOVIVERO EL MATORRAL E.U., Medellin, Colombia; Calle 36AA Sur No. 26A–35, Medellin, Colombia; Carrera 48 No. 15 Sur-45, Medellin, Colombia; DOB 5 Nov 1966; POB Medellin, Colombia; Cedula No. 15348215 (Colombia) (individual) [SDNTK]

16. LONDONO RAMIREZ, Juan Pablo Antonio, c/o INTERNETSTATIONS E.U., Medellin, Colombia; c/o MONEDEUX EUROPA S.L., Madrid, Spain; c/o MONEDEUX FINANCIAL SERVICES COLOMBIA LTDA., Bogota, Colombia; c/o MONEDEUX FINANCIAL SERVICES NORTH AMERICA, INC., Miami, FL; c/o MONEDEUX INTERNATIONAL SERVICES INC., Panama City, Panama; c/o MONEDEUX LATIN AMERICA, S. DE R.L. DE C.V., Mexico City, Distrito Federal, Mexico; Carrera 78 No. 34–40, Medellin, Colombia; DOB 15 Feb 1965; POB Manizales, Colombia; Cedula No. 10267976 (Colombia); Passport CC10267976 (Colombia); alt. Passport AJ847440 (Colombia); alt. Passport AI314893 (Colombia); R.F.C. LORJ650215DH1 (Mexico) (individual) [SDNTK]

17. LOPEZ MEJIA, Claudia Estela, c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o INVERSIONES CIFUENTES Y CIA. S. EN C., Medellin, Colombia; c/o LE CLAUDE, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; c/o OPERADORA NUEVA GRANADA, S.A. DE C.V., Mexico City, Distrito Federal, Mexico; Camino del Remanso, No. 80 A, Planta Baja, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Camino del Remanso No. 80 Interior 2, Colonia Lomas Country Club, Huixquilucan, Estado de Mexico C.P. 52779, Mexico; Tamarindos 105, Colonia Bosques de las Lomas, Naucalpan de Juarez, Estado de Mexico, Mexico; DOB 16 Dec 1972; POB Belen de Umbria, Risaralda, Colombia; Cedula No. 42104723 (Colombia); Passport AK572650 (Colombia) (individual) [SDNTK]

18. MARTINEZ GOMEZ, Milton Geovany; DOB 11 Jul 1972; POB Muzo, Boyaca, Colombia; Cedula No. 11186154 (Colombia) (individual) [SDNTK]

19. MONTOYA ZAPATA, Catalina Alexandra, c/o BIO FORESTAL S.A., Medellin, Colombia; c/o GANADERIA LA SORGUITA S.A., Medellin, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o PARQUES TEMATICOS S.A., Medellin, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; DOB 28 Apr 1985; POB Yarumal, Antioquia,

Colombia; Cedula No. 32299453 (Colombia) (individual) [SDNTK]

20. NICHOLLS EASTMAN, Winston, c/o CROSS WINDS, S.A., Panama City, Panama; c/o FEDERAL CAPITAL GROUP, S.A., Panama City, Panama; c/o LINEAS AEREAS ANDINAS LINCANDISA S.A., Quito, Ecuador; DOB 27 Mar 1943; POB Manizales, Colombia; Cedula No. 5199571 (Colombia); Residency Number 172191348–9 (Ecuador) (individual) [SDNTK]
21. PACHECO PARRA, Ana Yesennia (a.k.a. PACHECO CHAVEZ, Ana Yesennia), c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o PARQUES TEMATICOS S.A., Medellin, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; Carrera 22A No. 159B–18 P–3, Bogota, Colombia; DOB 22 Feb 1982; POB Miraflores, Boyaca, Colombia; Cedula No. 52866649 (Colombia) (individual) [SDNTK]
22. RAYGOZA CONTRERAS, Ruben, c/o MONTRAY, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Calle Adolfo Lopez Mateos No. 147, Colonia Ampliacion Miguel Hidalgo, Delegacion Tlalpan, Mexico City, Distrito Federal C.P. 14250, Mexico; Calle Minerva No. 358, Colonia Florida, Delegacion Alvaro Obregon, Mexico City, Distrito Federal C.P. 01030, Mexico; Calle Moras No. 833 Interior 102, Colonia Acacias, Delegacion Benito Juarez, Mexico City, Distrito Federal C.P. 03240, Mexico; Calle Plan de San Luis No. 1653, Colonia Mezquitan, Guadalajara, Jalisco C.P. 44260, Mexico; Prolongacion Manuel Avila Camacho No. 129, Colonia Hermosa Provincia, Puerto Vallarta, Jalisco C.P. 48348, Mexico; DOB 17 Mar 1970; POB Guadalajara, Jalisco, Mexico; C.U.R.P. RACR700317HJCYNB09 (Mexico); R.F.C. RACR700317N34 (Mexico) (individual) [SDNTK]
23. RESTREPO ZAPATA, Milvia Yaneth (a.k.a. RESTREPO ZAPATA, Milvia Janeth), c/o BIO FORESTAL S.A., Medellin, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o FUNDACION OKCOFFEE COLOMBIA, Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; Carrera 112 GT No. 86B–60, Bogota, Colombia; DOB 13 Dec 1973; Cedula No. 43825354 (Colombia) (individual) [SDNTK]
24. ROLDAN CARDONA, Ana Patricia, c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o LINEA AEREA PUEBLOS AMAZONICOS S.A.S., Bogota, Colombia; Calle 5A No. 43A–73, Medellin, Colombia; DOB 5 Dec 1969; POB Yarumal, Antioquia, Colombia; Cedula No. 43723334 (Colombia) (individual) [SDNTK]
25. ROLL CIFUENTES, Jaime Alberto, c/o C.I. GLOBAL INVESTMENTS S.A., Medellin, Colombia; c/o HOTELES Y BIENES S.A, Bogota, Colombia; DOB 15 Mar 1979; POB Medellin, Colombia; Cedula No. 98667284 (Colombia) (individual) [SDNTK]
26. SANCHEZ PUENTES, Yenny Mabel, c/o DOLPHIN DIVE SCHOOL S.A., Cartagena, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; Calle 140 No. 6–30 Int. 9 Ap. 201, Bogota, Colombia; Calle 187 54–55 Int. 21 Ap. 201, Bogota, Colombia; DOB 19 Dec 1967; POB Otanche, Boyaca, Colombia; Cedula No. 51908699 (Colombia); Passport AH982263 (Colombia) (individual) [SDNTK]
27. VARGAS CIFUENTES, Edmon Felipe, c/o C.I. GLOBAL INVESTMENTS S.A., Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; Zapopan, Jalisco, Mexico; DOB 19 Aug 1978; POB Medellin, Colombia; Cedula No. 79934460 (Colombia); C.U.R.P. VACE780819HNERFD01 (Mexico); Passport AI999013 (Colombia) (individual) [SDNTK]
28. VARGAS CIFUENTES, Paula Andrea, c/o C.I. GLOBAL INVESTMENTS S.A., Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o PARQUES TEMATICOS S.A., Medellin, Colombia; Boulevard Bugambilias No. 2114, Ciudad Bugambilias, Zapopan, Jalisco, Mexico; DOB 23 May 1976; POB Medellin, Colombia; C.U.R.P. VACP760523MNERFL00 (Mexico); Cedula No. 66973070 (Colombia); Passport AK715253 (Colombia) (individual) [SDNTK]
29. VILLA DE CIFUENTES, Carlina, c/o FUNDACION OKCOFFEE COLOMBIA, Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o ROBLE DE MINAS S.A., Medellin, Colombia; Calle 7D No. 43C–95, Medellin, Colombia; Calle 18B Sur No. 36–35 Apto. 603, Medellin, Colombia; Carrera 41 No. 6B Sur-9, Medellin, Colombia; DOB 30 Aug 1934; POB Yolombo, Antioquia, Colombia; Cedula No. 21342467 (Colombia) (individual) [SDNTK]
30. YELINEK, Shimon Yalin (a.k.a. YELINKE, Shimon), c/o CROCKER JEANS CORP. S.A., Panama City, Panama; c/o CROCKER JEANS STATION CORPORATION, Panama City, Panama; c/o FOX FASHION, S.A., Panama City, Panama; DOB 23 Jan 1961; POB Israel; Cedula No. E–8–92856 (Panama); Passport 9023900 (Israel) (individual) [SDNTK]

Foreign Entities

1. BIO FORESTAL S.A. (a.k.a. BIOFORESTAL S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Calle 7 Sur No. 42–70 Of. 1205, Medellin, Colombia; Finca Casa Blanca, Arboletes y Necoli, Antioquia, Colombia; Finca La Cana, Cordoba, Colombia; Finca San Luis, Monteria, Cordoba, Colombia; Finca Toldas, Guarne, Antioquia, Colombia; La Sorguita, Jerico, Antioquia, Colombia; NIT # 811038709–1 (Colombia) [SDNTK]
2. C.I. DISTRIBUIDORA DE SERVICIOS COMBUSTIBLES Y MINERIA S.A. (a.k.a. C.I. DISERCOM S.A.; a.k.a. DISERCOM S.A.; f.k.a. DISTRIBUIDORA DE SERVICIOS Y COMBUSTIBLES S.A.), Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; Carrera 13 No. 29–21, Manzana 1 Oficina 401, Bogota, Colombia; Carrera 13 No. 29–21, Manzana 1 Oficina 401, Bogota, Colombia; NIT # 830046009–5 (Colombia) [SDNTK]
3. C.I. GLOBAL INVESTMENTS S.A., Carrera 48 No. 38–46, Medellin, Colombia; NIT # 811039750–7 (Colombia) [SDNTK]
4. C.I. METALURGIA EXTRACTIVA DE COLOMBIA S.A.S. (a.k.a. C.I. METEXCOL S.A.S.), Carrera 86 No. 13A–66, Bogota, Colombia; NIT # 900389216–9 (Colombia) [SDNTK]

5. C.I. OKCOFFEE COLOMBIA S.A., Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 402, Bogota, Colombia; NIT # 830124959–1 (Colombia) [SDNTK]
6. C.I. OKCOFFEE INTERNATIONAL S.A., Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; NIT # 900060391–6 (Colombia) [SDNTK]
7. CIFUENTES URIBE Y CIA. S.C.S., Calle 16C No. 42–70, Medellin, Colombia; NIT # 811036756–7 (Colombia) [SDNTK]
8. CROCKER JEANS CORP. S.A., Panama City, Panama; RUC # 721135–1–473097 (Panama) [SDNTK]
9. CROCKER JEANS STATION CORPORATION, Panama City, Panama; RUC # 744528–1–478564 (Panama) [SDNTK]
10. CROSS WINDS, S.A., Panama City, Panama; RUC # 1303425–1–607081–77 (Panama) [SDNTK]
11. CUBI CAFE CLICK CUBE MEXICO, S.A. DE C.V., Montecito No. 38 Piso 21 Of. 29, Col. Napoles, Deleg. Benito Juarez, Mexico City, Distrito Federal C.P. 03810, Mexico; R.F.C. CCC–070201–4W7 (Mexico) [SDNTK]
12. CUBICAFE S.A. (a.k.a. OK COFFEE), Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; Calle 65 Bis No. 89A–73, Bogota, Colombia; Autopista Bogota-Medellin Km. 7, Parque Industrial Celta Lote 41 Bodega 8, Funza, Cundinamarca, Colombia; NIT # 830136426–1 (Colombia) [SDNTK]
13. DESARROLLO MINERO RESPONSABLE C.I. S.A.S. (a.k.a. DMR C.I. S.A.S.), Avenida Carrera 9 No. 113–52 Of. 401, Bogota, Colombia; NIT # 900386627–9 (Colombia) [SDNTK]
14. DOLPHIN DIVE SCHOOL S.A., Calle Jardin No 39–45, Cartagena, Colombia; Isla Pavito, Cartagena, Colombia; NIT # 806008379–6 (Colombia) [SDNTK]
15. ECOVIVERO EL MATORRAL E.U., Calle 36AA Sur No. 26A–35, Envigado, Antioquia, Colombia; Carrera 48 No. 15 Sur-45, Medellin, Colombia; NIT # 811027555–5 (Colombia) [SDNTK]
16. FEDERAL CAPITAL GROUP, S.A. (f.k.a. GARIZIM CAPITAL GROUP, S.A.), Panama City, Panama; RUC # 1149963–1–571540 (Panama) [SDNTK]
17. FOX FASHION, S.A. (a.k.a. FOX KIDS & BABY; a.k.a. FOX MEN & WOMEN), Albrook Mall, Local 47–B, Panama City, Panama; Multiplaza, Local 207, Panama City, Panama; Albrook Mall, Local Q–20, Panama City, Panama; RUC # 699492–1–468385–12 (Panama) [SDNTK]
18. FUNDACION OKCOFFEE COLOMBIA, Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; NIT # 900311507–1 (Colombia) [SDNTK]
19. FUNDACION PARA EL BIENESTAR Y EL PORVENIR (a.k.a. FUNPORVENIR), Calle 6 No. 32–39, Medellin, Colombia; NIT # 900310323–9 (Colombia) [SDNTK]
20. FUNDACION SALVA LA SELVA, Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; NIT # 900390392–9 (Colombia) [SDNTK]
21. GANADERIA LA SORGUITA S.A. (a.k.a. LA SORGUITA S.A.), Calle 16 Sur No. 46A–49 Piso 6, Medellin, Colombia; NIT # 800220730–4 (Colombia) [SDNTK]
22. GESTORES DEL ECUADOR GESTORUM S.A., Av. de los Shyris No. 35–174, Barrio Suecia, Quito, Ecuador; RUC # 1792141214001 (Ecuador) [SDNTK]
23. HOTELES Y BIENES S.A. (a.k.a. HOTEL NUEVA GRANADA), Avenida Jimenez No. 4–77, Bogota, Colombia; Avenida Calle 13 No. 4- 77, Bogota, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; NIT # 830092519–5 (Colombia) [SDNTK]
24. IGA LTDA., Carrera 47 No. 66–127, Itagui, Antioquia, Colombia; NIT # 811033126–3 (Colombia) [SDNTK]
25. INTERNETSTATIONS E.U., Carrera 43A No. 15 Sur-15 Ofc. 802, Medellin, Colombia; NIT # 900071164–8 (Colombia) [SDNTK]
26. INVERPUNTO DEL VALLE S.A., Calle 4 No. 6–02, Cali, Colombia; NIT # 805024892–7 (Colombia) [SDNTK]
27. INVERSIONES CIFUENTES Y CIA. S. EN C., Calle 7 Sur No. 42–70 Of. 1205, Medellin, Colombia; NIT # 811008928–8 (Colombia) [SDNTK]
28. LE CLAUDE, S.A. DE C.V., Calle Miguel E. Shultz No. 127, Colonia San Rafael, Delegacion Cuauhtemoc, Mexico City, Distrito Federal C.P. 06470, Mexico; R.F.C. LCL020619C14 (Mexico) [SDNTK]
29. LINEA AEREA PUEBLOS AMAZONICOS S.A.S. (a.k.a. LAPA S.A.S.), Mitu, Vaupes, Colombia; Villavicencio, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; NIT # 900377739–7 (Colombia) [SDNTK]
30. LINEAS AEREAS ANDINAS LINCANDISA S.A. (a.k.a. LINCANDISA S.A.), Av. de los Shyris No. 35–174, Barrio Suecia, Quito, Ecuador; RUC # 1792136652001 (Ecuador) [SDNTK]
31. MONEDEUX EUROPA S.L., Calle Pinar, 5, Madrid 28006, Spain; C.I.F. B85375434 (Spain) [SDNTK]
32. MONEDEUX FINANCIAL SERVICES COLOMBIA LTDA., Calle 100 No. 8A–55 P 10, Bogota, Colombia; NIT # 900112718–5 (Colombia) [SDNTK]
33. MONEDEUX INTERNATIONAL SERVICES INC., Panama City, Panama; RUC # 895887–1–513925 (Panama) [SDNTK]
34. MONEDEUX LATIN AMERICA, S. DE R.L. DE C.V. (f.k.a. IKIOSKOS DE MEXICO, S. DE R.L. DE C.V.), Avenida Santa Fe No. 495, Piso 4, Colonia Cruz Manca, Delegacion Cuajimalpa de Morelos, Mexico City, Distrito Federal C.P. 05349, Mexico; R.F.C. MLA010125E38 (Mexico); alt. R.F.C. IME010125C31 (Mexico) [SDNTK]
35. MONTRAY, S.A. DE C.V., Calle Jaime Nuno No. 1291–B, Colonia Chapultepec Country, Guadalajara, Jalisco C.P. 44620, Mexico; R.F.C. MON060123J62 (Mexico) [SDNTK]
36. OBRAS Y PROYECTOS PIQUEHERVA S.L., Calle de San Jose, 20, El Boalo, Madrid 28413, Spain; C.I.F. B84244748 (Spain) [SDNTK]
37. OPERADORA NUEVA GRANADA, S.A. DE C.V., Avenida 13 No. 4–77, Bogota, Colombia; Mexico City, Distrito Federal, Mexico; Folio Mercantil No. 293481 Distrito Federal (Mexico) [SDNTK]
38. PARQUES TEMATICOS S.A. (a.k.a. HACIENDA HOTEL EL INDIO), Calle 16C Sur No. 42–70, Apto. 502, Medellin, Colombia; Vereda la Playita, Barbosa, Antioquia, Colombia; NIT # 811035877–5 (Colombia) [SDNTK]
39. PROMO RAIZ S.A., Calle 7 Sur No. 42–70 Of. 1205, Medellin, Colombia; NIT # 811035904–6 (Colombia) [SDNTK]
40. RED MUNDIAL INMOBILIARIA, S.A. DE C.V., Calle Montecito No. 38, Piso 21, Colonia Napoles, Delegacion Benito Juarez, Mexico City, Distrito Federal C.P. 03810, Mexico; Av. Parques de Granada No. 32–405, Col. Parques de la Herradura, Huixquilucan, Estado de Mexico, Mexico; R.F.C. RMI020130JB9 (Mexico) [SDNTK]
41. ROBLE DE MINAS S.A., Calle 18B Sur No. 36–35 Apto. 1603, Medellin, Colombia; Calle 75 Carrera 77E, Medellin, Colombia; NIT # 811043722–6 (Colombia) [SDNTK]
42. RUTA 33 MOTOCICLETAS Y ACCESORIOS LTDA., Avenida 33 No. 66B–134, Medellin, Colombia;

NIT # 900105312–1 (Colombia) [SDNTK]

43. TRANSPORTADORA Y COMERCIALIZADORA SYSTOLE S.A.S., Calle 6A No. 22–46 Apto. 1104, Medellin, Colombia; Carrera 41A No. 22 Sur-87 Apto. 510, Envigado, Antioquia, Colombia; NIT # 900184013–1 (Colombia) [SDNTK]
44. UNION DE CONSTRUCTORES CONUSA S.A., Apartamentos Life, Medellin, Colombia; Avenida Carrera 9 No. 113–52 Ofc. 401, Bogota, Colombia; Boca Salinas, Santa Marta, Colombia; Calle 74 No. 10–33, Mirador del Moderno, Bogota, Colombia; Carrera 68D No. 258–86 Of. 504 Torre Central, Bogota, Colombia; Haciendas de Potrerito, Cali, Colombia; Isla Pavito, Cartagena, Colombia; Transversal 1B Este No. 7A–20 Sur, Buenos Aires Etapa II, Bogota, Colombia; NIT # 800226431–4 (Colombia) [SDNTK]

U.S. Entity Identified as Blocked Property

1. MONEDEUX FINANCIAL SERVICES NORTH AMERICA, INC., Miami, FL; Business Registration Document # P05000069290; US FEIN 205487820 [SDNTK]

Dated: February 23, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–4602 Filed 3–1–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is publishing the names of eight individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the eight individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on February 23, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of the Treasury, in consultation with the Attorney General and Secretary of State: (a) to play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On February 23, 2010, the Director of OFAC removed from the SDN List the eight individuals listed below, whose property and interests in property were blocked pursuant to the Order:

FAJARDO CUELLAR, Jairo, c/o ADMINISTRADORA DE SERVICIOS VARIOS CALIMA S.A., Cali, Colombia; c/o CHAMARTIN S.A., Cali, Colombia; Cedula No. 1619282 (Colombia); Passport 1619282 (Colombia) (individual) [SDNT]

HERRERA INFANTE, Alberto, c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; DOB 10 Apr 1960; Cedula No. 16637518 (Colombia) (individual) [SDNT]

MORALES ESPINAR, Carmen Rosa, c/o COLFARMA PERU S.A., Lima, Peru; DOB 9 Aug 1976; D.N.I. 10006822 (Peru) (individual) [SDNT]

MORALES LUYO, Luis Jaime, c/o COLFARMA PERU S.A., Lima, Peru; LE Number 08195408 (Peru) (individual) [SDNT]

OTALORA RESTREPO, Edgar Marino, c/o DISDROGAS LTDA., Yumbo, Valle, Colombia; Cedula No. 5198602 (Colombia) (individual) [SDNT]

SALCEDO RAMIREZ, Jaime, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; DOB 25 Dec 1964; Cedula No. 16706222 (Colombia) (individual) [SDNT]

SALDARRIAGA ACEVEDO, Carlos Omar, Calle 9B No. 50–100 apt. 102, Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; DOB 16 Jan 1954; alt. DOB 6 Jan 1954; Cedula No. 14998632 (Colombia) (individual) [SDNT]

VILLA OSPINA, Mauricio, c/o ADMINISTRADORA DE SERVICIOS VARIOS CALIMA S.A., Cali, Colombia; c/o CHAMARTIN S.A., Cali, Colombia; Cedula No. 16365834 (Colombia); Passport 16365834 (Colombia) (individual) [SDNT]

Dated: February 23, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–4601 Filed 3–1–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1065–B and Schedules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1065–B, U.S. Return of Income for Electing Large Partnerships, and Schedule K–1, Partner's Share of Income (Loss) From an Electing Large Partnership.

DATES: Written comments should be received on or before May 2, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ralph M. Terry, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–8144, or through the Internet at *Ralph.M.Terry@IRS.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Return of Income for Electing Large Partnerships (Form 1065–B), and Schedules.

OMB Number: 1545–1626.

Form Number: Form 1065–B and Schedules.

Abstract: Form 1065–B is an information return used to report the income, gains, losses, deductions, *etc.,* from the operation of an electing large partnership (as defined in section 775). An electing large partnership (ELP) may be required to pay certain taxes, such as recapture of the investment credit under section 50, but generally it "passes through" any profits or losses to its partners. Partners must include these ELP items on their income tax returns.

Current Actions: Schedule K and M–3 have been added to this collection which has resulted in an increase to the overall burden of form 1605–B.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 324 hrs. 19 min.

Estimated Total Annual Burden Hours: 728,996.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–4566 Filed 3–1–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 109
Hazardous Materials: Enhanced Enforcement Authority Procedures; Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 109

[Docket No. PHMSA–2005–22356]

RIN 2137–AE13

Hazardous Materials: Enhanced Enforcement Authority Procedures

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA is implementing enhanced inspection, investigation, and enforcement authority conferred on the Secretary of Transportation by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005. This final rule establishes procedures for issuance of emergency orders (restrictions, prohibitions, recalls, and out-of-service orders) to address unsafe conditions or practices posing an imminent hazard; opening packages to identify undeclared or non-compliant shipments, when the person in possession of the package refuses a request to open it; and the temporary detention and inspection of potentially non-compliant packages. These inspection and enforcement procedures will not change the current inspection procedures for DOT, but will enhance DOT's existing enforcement authority and allow us to respond immediately and effectively to conditions or practices that pose serious threats to life, property, or the environment. As this rule affects only agency enforcement procedures, it therefore results in no additional burden of compliance costs to industry.

DATES: This final rule is effective May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Vincent M. Lopez, Office of Chief Counsel, (202) 366–4400, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 2008, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (NPRM) under Docket No. PHMSA–2005–22356 proposing to issue rules implementing certain inspection, investigation, and enforcement authority conferred on the Secretary of Transportation by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (HMTSSRA). In this final rule, the agency is finalizing its procedures for implementing its enhanced enforcement authority.

Under authority delegated by the Secretary of Transportation (Secretary), four agencies within DOT enforce the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180 and other regulations, approvals, special permits, and orders issued under Federal Hazardous Materials Transportation Law (Federal hazmat law), 49 U.S.C. §§ 5101 *et seq.:* (1) Federal Aviation Administration (FAA), 49 CFR 1.47(j)(1); (2) Federal Railroad Administration (FRA), 49 CFR 1.49(s)(1); (3) Federal Motor Carrier Safety Administration (FMCSA), 49 CFR 1.73(d)(1); and (4) PHMSA, 49 CFR 1.53(b)(1). The Secretary has delegated authority to each respective operating administration to exercise the enhanced inspection and enforcement authority conferred by HMTSSRA. 71 FR 52751, 52753 (Sept. 7, 2006). The United States Coast Guard (USCG) is authorized to enforce the HMR in connection with certain transportation or shipment of hazardous materials by water. This authority originated with the Secretary and was first delegated to USCG prior to 2003, when USCG was made part of the Department of Homeland Security. Enforcement authority over "bulk transportation of hazardous materials that are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel without mark or count, and regulations and exemptions governing ship's stores and supplies" was also transferred in 2003 to the USCG. DHS Delegation No. 0170, Sec. 2(99) & 2(100); *see also* 6 U.S.C. §§ 457, 551(d)(2). DOT will coordinate its inspections, investigations, and enforcements with the USCG, through a Memorandum of Understanding (MOU) or otherwise, to avoid duplicative or conflicting efforts. Nothing in this final rule affects USCG's enforcement authority with respect to transportation of hazardous materials.

A. Need for Enhanced Enforcement Authority

Each year, about three billion tons of hazardous materials are transported in the United States. United States Government Accountability Office, Undeclared Hazardous Materials: New DOT Efforts May Provide Additional Information on Undeclared Shipments, GAO–06–471, at 9 (March 2006) (GAO Report). Under the HMR, which prescribe appropriate packaging, hazard communication, and handling requirements, nearly all of these shipments move through the system safely and without incident. When incidents do occur, HMR-mandated labels and other forms of hazard communication provide transportation employees and emergency responders the information necessary to mitigate the consequences. These risk controls provide a high degree of protection; however, their effectiveness depends largely on compliance by hazmat offerors, beginning with proper classification and packaging of hazardous materials. When a package containing hazardous materials is placed in transportation without regard to HMR requirements, the effectiveness of all other risk controls is compromised, increasing both the likelihood of an incident and the severity of consequences. Accordingly, DOT has long considered undeclared shipments of hazardous materials to be a serious safety issue.

Hidden hazardous materials pose a significant threat to transportation workers, emergency responders, and the general public. By definition, an undeclared shipment is one that is not marked, labeled, accompanied by shipping documentation, or otherwise identified as hazardous materials. *See* 49 CFR 171.8 (definition of undeclared hazardous material). Experience demonstrates that undeclared hazardous materials are more likely to be packaged improperly and, consequently, more likely to be released in transportation. Moreover, it is likely that terrorists who seek to use hazardous materials to harm Americans would move those materials as hidden shipments. Accordingly, although the presence of undeclared hazardous materials by no means demonstrates wrongful intent, DOT cannot expect to target willful violations and security threats by limiting inspections and enforcement to declared shipments. One way to address the problem of undeclared shipments is to permit a DOT agent to open and examine packages suspected to contain hazardous materials. It is the experience of most enforcement programs that when asked to open a package, the offeror or regulated industry generally opens it voluntarily. DOT generally operates under the assumption that it already possesses the implicit authority, by virtue of our enforcement authority, to open packages that the person in possession refuses to open without the passage of HMTSSRA. However, the new statutory authority implemented here explicitly grants that authority. This authority will not change the current inspection procedures for DOT

and is not likely to result in additional packages being opened. In addition to the discovery of undeclared shipments, the statutory authority also provides DOT with a tool to identify declared hazardous materials shipments that nonetheless may not have been prepared in accordance with all existing HMR requirements.

Although a great deal of attention has been given to the package opening portion of the statutory authority and its implementing portion of the regulation, the authority to issue emergency orders, restrictions, prohibitions, and recalls in response to imminent hazards is the most transformative to DOT's enforcement programs. Imminent hazards, by definition, require immediate intervention to reduce the substantial likelihood of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment. Prior to the enactment of HMTSSRA, DOT could obtain relief against a hazmat safety violation posing an imminent hazard only by court order. Even with such a threat present, the DOT operating administration was required to enlist the Department of Justice (DOJ) to file a civil action against the offending party, seeking a restraining order or preliminary injunction. As a practical matter, judicial relief could rarely be obtained before the hazardous transportation movement was complete. The streamlined administrative remedies implemented in this rulemaking will materially enhance our ability to prevent unsafe movements of hazardous materials and reduce related risks.

B. Statutory Amendments to Inspection, Investigation, and Enforcement Authority

On August 10, 2005, the President signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which included the HMTSSRA as Title VII of the statute, 119 Stat. 1891. Section 7118 of HMTSSRA (Section 7118) revised 49 U.S.C. 5121, inserting procedures for enhanced enforcement authority, including the ability to open the outer packaging of packages believed to contain hazardous materials and authority to remove hazardous material shipments from transportation believed to pose an imminent hazard.

Congress enacted HMTSSRA in part to combat the problem of undeclared hazardous materials shipments. While Section 7118 enhances DOT's authority to discover undeclared hazardous materials shipments, the clear language of this statutory authority is not limited to undeclared shipments. On a broader scale, Section 7118 promotes the Department's inspection and enforcement authority "to more effectively identify hazardous materials shipments and to determine whether those shipments are made in accordance with the [H]azardous [M]aterials [R]egulations." H. Conf. Rep. No. 109–203, at 1079 (2005), *reprinted in* 2005 U.S.C.C.A.N. 452, 712. Congress reasoned that the Department needed enhanced inspection and enforcement authority to ensure that "DOT officials * * * have the tools necessary to accurately determine whether hazardous materials are being transported safely and in accordance with the relevant law and regulations." H. Conf. Rep. No. 109–203, at 1081, 2005 U.S.C.C.A.N. at 714. Section 7118 carries out this directive by authorizing DOT employees to: (1) Access, open and examine a package (except for the packaging that is immediately adjacent to the suspected hazardous material's contents) that is offered for, or is in transportation in commerce, when those employees have an objectively reasonable and articulable belief that the shipment may contain a hazardous material and does otherwise not comply with this Chapter; (2) remove the package from transportation if it is determined that the shipment may pose an imminent hazard; (3) order the shipment to be transported, opened, and tested at an appropriate facility, as necessary; and (4) permit the shipment to resume its transportation when an inspection does not identify an imminent hazard.

II. Notice of Proposed Rulemaking

On October 2, 2008, PHMSA published a notice of proposed rulemaking (NPRM) (73 FR 57281) to propose procedures to implement the expanded enforcement authority conferred in HMTSSRA. As proposed, these procedures would apply to hazardous materials safety compliance and enforcement activities conducted by PHMSA, FAA, FRA, and FMCSA inspection personnel. Specifically, PHMSA proposed procedures to enable DOT agents to open, detain, and remove a hazardous materials shipment from transportation in commerce, and order the package to be transported to a facility to analyze its contents. In addition, PHMSA proposed procedures for issuing emergency orders to address imminent hazards. As proposed, these procedures would apply in a number of contexts and circumstances:

- PHMSA proposed procedures under which an agent may open a package to determine whether it contains an undeclared hazardous material or otherwise does not comply with applicable regulatory requirements. These procedures would apply to the opening of an overpack, outer packaging, freight container, or other packaging component not immediately adjacent to the hazardous material. Agents would not open single packagings (such as cylinders, portable tanks, cargo tanks, or rail tank cars) nor would agents open the innermost receptacle of a combination packaging.
- PHMSA proposed procedures under which an agent could temporarily remove a package or related packages from transportation when the agent believed that the package posed an imminent hazard. Such a belief could arise from a compliance problem identified as a result of opening the package or from conditions observed through an inspection that does not include opening the package. As proposed, the agent could remove a package or related packages from transportation on his or her own authority provided he recorded his belief in writing. An agent could temporarily remove any type of package from transportation if he or she had a "reasonable and articulable belief" that the package posed an imminent hazard.
- PHMSA proposed procedures under which an agent could order the person in possession of or responsible for the package to transport the package and its contents to a facility that would examine and analyze its contents. An agent could issue such an order for any type of package or shipment, not merely those packages for which package opening is authorized. As proposed, the agent could issue this order on his own authority provided he documented his reasoning.
- PHMSA proposed procedures under which an agent could assist in preparing a package for safe and prompt transportation if, after a complete examination of a package initially thought to pose an imminent hazard, no imminent hazard was found. If the package had been opened, the agent would assist in reclosing the package in accordance with the packaging manufacturer's closure instructions or an alternate closure method approved by PHMSA, marking the package to indicate that it was opened and reclosed in accordance with DOT procedures, and returning it to the person from whom it was obtained.
- PHMSA proposed procedures for the issuance of an out-of-service (OOS) order if, after complete examination of a package initially thought to pose an imminent hazard, an imminent hazard was indeed found to exist. The OOS

order would effect the permanent removal of the package from transportation by prohibiting its movement until it was brought into compliance with all applicable regulatory requirements. An OOS order could be issued for any type of packaging or shipment.

• PHMSA proposed procedures for the issuance of an emergency order when PHMSA, FAA, FMCSA, or FRA determined that a non-compliant shipment or an unsafe condition or practice was causing an imminent hazard. As proposed, the PHMSA, FAA, FMCSA, or FRA Administrator could issue an emergency order without advance notice or opportunity for a hearing. The emergency order could be issued in conjunction with or in place of an OOS order. The emergency order could impose emergency restrictions, prohibitions, or recalls and could be issued for any type of shipment and for any unsafe condition posing an imminent hazard, not merely unsafe conditions related to packaging.

III. Summary of the Final Rule

In this final rule, PHMSA is implementing statutory authority to establish procedures for issuing emergency orders to address imminent hazards. In addition, statutory authority for DOT agents during an inspection conducted under existing enforcement authority is also being implemented. These procedures will apply in a number of contexts and circumstances:

• An agent may open a package to determine whether it contains non-compliant shipments of hazardous materials when the agent has reason to believe that the package does not comply with regulatory requirements. These procedures apply to the opening of any packaging component not immediately adjacent to the hazardous material. Agents will not open single packagings (such as cylinders, portable tanks, cargo tanks, or rail tank cars) nor will agents open the innermost receptacle of a combination packaging. An agent will only open a package with cause and if the person in possession of the package refuses to open it.

• An agent may temporarily remove a package or shipment from transportation, or prevent its entering transportation, when the agent believes that the package or shipment may pose an imminent hazard. Such a belief may arise from a compliance problem identified as a result of opening the package or from conditions observed through an inspection that does not include opening the package. The agent may remove a package or related packages from transportation for up to 48 hours on his or her own authority provided he records in writing the basis for his belief that the package or related packages may pose an imminent hazard. This regulation implements statutory authority for DOT to take immediate action to remove a potentially dangerous package from transportation, rather than seeking a court order to stop a package.

• An agent may order the person in possession of or responsible for the package to transport the package and its contents to a facility that will examine and analyze its contents. An agent may issue such an order for any type of package. The agent may issue this order on his own authority provided he documents his reasoning and provides written notification for the reasons for removal.

• An agent will assist in preparing a package for safe and prompt transportation if, after a complete examination of a package initially thought to pose an imminent hazard, no imminent hazard is found. If the package has been opened, the agent will assist in reclosing the package in accordance with the packaging manufacturer's closure instructions marking the package to indicate that it was opened and reclosed in accordance with DOT procedures, and returning it to the person from whom it was obtained.

• An out-of-service (OOS) order will be issued if, after complete examination of any package, an imminent hazard is indeed found to exist. The OOS order effects the permanent removal of the package from transportation by prohibiting its movement until it has been brought into compliance with all applicable regulatory requirements. An emergency order will be issued when DOT determines that a non-compliant shipment or an unsafe condition or practice is causing an imminent hazard. The PHMSA, FAA, FMCSA, or FRA Administrator may issue an emergency order without advance notice or opportunity for a hearing. The emergency order may impose emergency restrictions, prohibitions, or recalls and may be issued for any type of packaging, not merely those for which package opening is authorized, and for any unsafe condition posing an imminent hazard, not merely unsafe conditions related to packaging.

IV. Discussion of Comments on the NPRM

The following paragraphs discuss the comments received on the NPRM and the revisions we have made in response to the comments. Interested persons should be aware that, in conjunction with this final rule, DOT has developed an internal operations manual for training and use by its agents when this final rule becomes effective. The operations manual will be made available to the public on the PHMSA Web site, *http://www.phmsa.dot.gov.* The operations manual is a joint document created by the operating administrations that enforce the HMR, to provide guidance on common issues encountered by the operating administrations in the exercise of existing authorities. The manual also provides guidance to agents who, in the course of conducting inspections, determine that they need to open a package, remove a package from transportation, or perform any other function authorized by 49 CFR Part 109. The manual seeks to establish baseline conditions that will ensure consistent application of the authorities exercised under 49 CFR part 109 at a minimum threshold. Each operating administration may place additional constraints on the application of these regulations. This guidance will be implemented to target and manage the use of enhanced inspection and enforcement authority in a manner that minimizes burdens on the transportation system while, at the same time, meeting the overriding mission of transportation safety. It may be subject to change as agency policies evolve.

In the following paragraphs, we discuss the relevant comments to the NPRM and explain the impact of the comments on the regulatory text in this final rule. The comments in the docket for this rulemaking may be viewed at *https://www.regulations.gov* under Docket No. PHMSA–2005–22356.

A. Scope of the Rule

Although most commenters express support for the proposed rule's focus on the detection of undeclared hazardous materials shipments, many raise concerns with the scope of the rule and several practical aspects of the proposal. Some commenters (including the Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA), the Association of Hazmat Shippers, Inc. (AHS), the American Trucking Associations (ATA), the Radiopharmaceutical Shippers & Carriers Conference (RSCC), and the Institute of Makers of Explosives (IME)) express the view that DOT should limit the use of its enhanced authority to discover undeclared shipments of hazardous materials. According to the commenters, the enhanced authority should not apply to shipments of hazardous materials that are declared but otherwise may not conform to

requirements in the HMR. Declared shipments, the commenters contend, can be investigated under existing regulatory procedures to address noncompliance. IME comments that although the preamble to the NPRM states that the inspection and opening of packages authority would be used to identify undeclared or non-compliant shipments, no such limitation is stated in the proposed regulatory text. IME also suggests that the opening of outer packagings as proposed in the rule should be limited to instances where it would be "reasonably" necessary to establish that a package is non-compliant. AHS asserts that the use of this enhanced authority to conduct "random stops" in order to "verify that hazardous materials are packaged, marked, and labeled in compliance with DOT requirements" would be contrary to the public interest.

PHMSA Response:

Commenters cite to legislative history as evidence that this authority should apply only to undeclared shipments; however, DOT interprets the statute more broadly. The plain language of the statute does not limit DOT's authority to undeclared shipments. Although discovery of undeclared shipments was a major catalyst for this legislation, it was not the sole purpose, as demonstrated by the legislative history indicating that Congress intended to promote DOT's authority to ensure that hazardous materials shipments are made in accordance with the HMR. *See supra.*

Moreover, in HMTSSRA, Congress created a two-tiered standard to deal with noncompliant shipments of hazmat—first, the ability to detect the presence of non-compliant shipments of hazmat; and second, a means to deal with emergency situations where such shipments may seriously impact the safety of others or the environment.

It is quite possible that a package declared as hazmat, but that is otherwise non-compliant with the HMR, could pose an imminent hazard. If DOT narrowed the application of this authority only to undeclared shipments, the agency would be rendered powerless in situations in which emergency enforcement action is desperately needed. DOT does not believe Congress granted this authority with such a limited view of safety in mind. Imminent hazard, as defined in the statute, means the existence of a condition relating to hazardous material that presents a substantial likelihood of death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment. *See* 49 U.S.C. 5102(5). We do not believe imminent hazards occur only as a result of undeclared hazmat shipments.

The agency is mindful, however, of the numerous comments received concerning the broad scope of the package opening authority. The statutory authority is actually quite broad: It states that an agent may open and examine a package when there is an objectively reasonable and articulable belief that the package may contain a hazardous material. Thus, it would seem that the statute could allow the opening of *any* packages that may contain hazardous material, without regard to whether or not the package may be in compliance. In response to comments to the NPRM, which incorporated the language directly from the statute, we decided to narrow the scope of this rule from any packages that may contain hazardous material to any packages that may contain hazardous material and are not in compliance with the HMR or Federal hazmat law. Limiting the opening of packages to only those that may be non-compliant will guard against unwarranted opening or delay of declared compliant packages. Accordingly, this final rule includes a separate provision, § 109.5 Opening packages, that addresses the opening of packages under this authority. PHMSA believes this is a pivotal limitation on its package opening authority, providing the industry a greater sense of the parameters within which agents may exercise this authority while also balancing the agency's need to enforce the HMR. By narrowing the scope of the package opening authority, the agency will be able to direct its inspections and investigations where the greatest needs exist: Undeclared and non-compliant shipments that may pose an imminent hazard. Limiting the opening of packages to packages that may be non-compliant will guard against unwarranted opening or delay of declared packages that are in compliance with the HMR. Ultimately, this limitation will guard against the unnecessary disruption of commerce.

Dow Chemical Co. (Dow) states that the "objectively reasonable and articulable belief" standard may lead to inconsistent application of the rule, and should thus be more clearly defined.

PHMSA Response:

The objectively reasonable and articulable belief standard was defined in the NPRM, and is finalized here, as a "belief based on particularized and identifiable facts that provide an objective basis to believe or suspect" that a package may pose an imminent hazard, citing well-settled case law. 73 FR 57285–86. Therefore, to remove a package from transportation, an agent must be able to articulate specific facts about the instant situation establishing that he held an objective and reasonable belief that a package could pose an imminent hazard if it continued in transportation. The application of this standard is inherently situational, and it would be inaccurate to draw bright lines absent a specific set of facts. The development of an internal operations manual by all of the operating administrations serves to prevent inconsistencies among modes of transportation by establishing a baseline from which all modes will work. Moreover, the manual will ensure the uniform administration of the authority within a mode.

B. Comments to Specific Definitions in § 109.1 of Proposed Rule

"Perishable Hazardous Material"

In the NPRM, PHMSA proposed to define the term "perishable hazardous material" as "a hazardous material that is subject to significant risk of speedy decay, deterioration, or spoilage." United Parcel Service (UPS) suggests a change in the definition as follows: "A material of any kind, including either hazardous or non-hazardous material that is subject to significant risk of speedy decay, deterioration, or spoilage." RSCC also comments that the definition of "perishable hazardous material" should be expanded to include packages consigned for medical use because the urgency of these deliveries is not limited to the perishable nature of the contents, but also the critical needs of the medical personnel awaiting the shipment.

PHMSA Response:

UPS points out a helpful distinction; however, changing the term to "perishable material" to include hazardous and non-hazardous material is beyond the scope of this rule. The NPRM's Section-by-Section misstated the definitional term as "perishable" while it should have been termed "perishable hazardous material," as in the regulatory text of § 109.1. We have corrected this drafting error in the applicable regulatory provision, § 109.13(a)(4), to be consistent with the term as defined in § 109.1.

PHMSA agrees, however, with RSCC that the definition of "perishable hazardous materials" should be expanded to include other types of packages that contain hazardous materials consigned for medical use. In addition to the proposed definition cited above, the definition has been revised to also include the following

language: "A hazardous material that is subject to significant risk of speedy decay, deterioration, or spoilage, or hazardous materials consigned for medical use in the prevention, treatment, or cure of a disease or condition in human beings or animals where expeditious shipment and delivery meet a critical medical need."

"Properly Qualified Personnel"

In the NPRM, PHMSA proposed to define "properly qualified personnel" to mean "a company, partnership, proprietorship, or individual who is technically qualified to perform designated tasks necessary to assist an agent in inspecting, examining, opening, removing, testing or transporting packages." The Dangerous Goods Advisory Council (DGAC) suggests that with respect to term that "person" be used consistent with the definition in 49 CFR 171.8, *i.e.,* "a person who is technically qualified."

PHMSA Response:

The term is defined as DGAC suggests, as reiterated above. The definition for "properly qualified personnel" comes directly from the authorizing statute, 49 U.S.C. 5121 (c)(1)(F). Section 109.3(b)(4)(iv) from the NPRM used the term "qualified personnel." The content of § 109.3, Inspections and investigations, as proposed in the NPRM, has been reorganized in the final regulatory text. This particular provision regarding properly qualified personnel was located in § 109.3(b)(4)(iv) in the NPRM as follows: "Authorize qualified personnel to assist in the activities conducted under this paragraph (b)(4)." This substantive provision is now located in the new § 109.11, Assistance of properly qualified personnel, where it states: "If an agent is not properly qualified to perform a function, or when safety might otherwise be compromised by the agent's performance of a function that is essential for the agent's exercise of authority under this part, the agent may authorize properly qualified personnel to assist in the activities conducted under this part."

"Agent"

In the NPRM, PHMSA proposed to define "agent" to mean "an officer, employee, or agent authorized by the Secretary to conduct inspections or investigations under Federal hazmat law." UPS expresses concern that despite the NPRM preamble language explaining that the scope of the rule is limited to personnel of designated U.S. DOT agencies, the definition of "agent" is not specific enough and could be read expansively by state enforcement personnel as an authorization for them to engage in the opening of packages, since it is customary to refer to State enforcement personnel as "duly authorized representatives of the Department." UPS proposes that "agent" be defined as "a Federal officer, employee, or agent specifically authorized and trained by the Secretary to conduct inspections or investigations under the Federal hazardous material transportation law."

PHMSA Response:

As UPS notes in its comments, the preamble to the NPRM specifically stated that the rule would not apply to state personnel. Unlike DOT agents, State partners act under their own police powers, authorities that DOT agents do not possess. The preamble explained that "the proposed regulations and underlying statutory authority are Federal," and accordingly, "they would not empower State officials to exercise the enhanced inspection and enforcement authority" of the rule. This includes State agents or officers who are enforcing equivalent regulations under the Motor Carrier Safety Assistance Program (MCSAP) and other grant programs. PHMSA agrees that the word "Federal" is helpful in the definition. Thus, in this final rule, the definition of "Agent of the Secretary or agent" is revised to read: "a Federal officer, employee, or agent authorized by the Secretary to conduct inspections and investigations under the Federal hazardous material transportation law."

"Emergency Order"

In the NPRM, PHMSA proposed to define "emergency order" to mean an emergency restriction, prohibition, recall, or out-of-service order. DGAC suggests that the definition of "Emergency order" include the term "written" to be consistent with the regulatory text in proposed § 109.5.

PHMSA Response:

Proposed § 109.5(a) specifically stated that the basis for issuance of an emergency order shall be set forth in writing. However, PHMSA agrees for the sake of clarity and consistency, the term "written" should be incorporated into the definition. The definition of "emergency order" has been revised to read as follows: "an emergency restriction, prohibition, recall, or out-of-service order set forth in writing."

"Packaging"

In the NPRM, PHMSA proposed to define "packaging" to mean any receptacle, including, but not limited to, a freight container, intermediate bulk container, overpack, or trailer, and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of this subchapter. DGAC comments that the definition of "packaging" is not fully consistent with the definition in 49 CFR 171.8 and though illustrative, fears it may cause more confusion than clarity.

PHMSA Response:

PHMSA agrees with the commenter that the expanded definition of packaging is inconsistent with the existing regulatory definition. PHMSA has reconsidered the necessity of retaining a definition inconsistent with 49 CFR 171.8, and for purposes of clarity and consistency, the definition of "packaging" as provided in 49 CFR 171.8 will apply in the final rule. "Packaging" is defined in 49 CFR 171.8 as "a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of this subchapter." PHMSA believes this definition is sufficient for the purposes of this authority, as the final rule makes clear that as long as the packaging is not immediately adjacent to the hazardous material itself, an agent may gain access to, open and examine such a package subject to this authority.

"Trailer"

In the NPRM, PHMSA proposed to define "trailer" to mean "a non-powered motor vehicle designed for transporting freight that is drawn by a motor carrier, motor carrier tractor, or locomotive." DGAC comments that the definition of trailer is inconsistent with the definition in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 CFR 390.5, which does not mention "locomotive."

PHMSA Response:

PHMSA agrees with the commenter that the proposed definition was not consistent with the preamble discussion. While the proposed rule defined trailer as "a non-powered motor vehicle designed for transporting freight that is drawn by a motor carrier, motor carrier tractor, or locomotive," in the preamble we explained that "a trailer has a chassis, hitch, and tires attached to the unit, enabling it to travel as a cargo unit attached to a tractor." Because the only time "trailer" is used in the rule is when it is listed in the definition of "packaging," and because we do not believe that the term needs further clarification, the definition of the term has been removed from § 109.1.

"Freight Container"

In the NPRM, PHMSA proposed to define "freight container" to mean "a package configured as a reusable container that has a volume of 64 cubic feet or more, designed and constructed to permit being lifted with its contents intact and intended primarily for containment of smaller packages (in unit form) during transportation." The Reusable Industrial Packaging Association (RIPA) comments that there is no need to utilize volumetric capacity in the proposed definition of "freight container." Further, RIPA comments that if DOT believes there is a need to include such a reference, the threshold should be greater than 64 cubic feet, since it would encompass some rigid and flexible intermediate bulk container (IBC) designs, as well as many large packagings. RIPA offers the following definition for Agency consideration: "'Freight container' means a reusable container that is designed for mechanical handling and intended for the containment of unit packages. Freight containers are not designed for direct contact with hazardous ladings."

PHMSA Response:

As noted in the NPRM, the definition of "freight container," including the reference to volumetric capacity, comes directly from 49 CFR 171.8 and is included in this rule for clarity and ease of referral. Therefore, in this final rule, PHMSA is adopting the definition as proposed.

C. Identification of Packages Subject to Proposed § 109.3(b)(4)'s Authority To Stop, Open, Remove and Test a Package and the Objectively Reasonable and Articulable Belief Standard

In the NPRM, PHMSA proposed enhanced inspection procedures for conducting hazardous materials inspections. In proposed § 109.3(b)(4) (now § 109.5), PHMSA proposed to permit an agent to open an overpack, outer packaging, freight container, or other package component that is not immediately adjacent to the hazardous material contents and inspect the inside of the receptacle or container for undeclared hazardous material, provided the agent has an objectively reasonable and articulable belief that the shipment contains hazardous material and does not otherwise comply with Federal hazmat law or the HMR.

DGAC questions how proposed § 109.3(b)(4) would apply to a package that is marked and labeled to indicate it contains a hazardous material and also how that authority relates to proposed § 109.3(b)(5), which provides that: "If, after an agent exercises this enhanced authority, and an imminent hazard is not found to exist, the agent shall assist in preparing the package for safe and prompt transportation when practicable, by reclosing the package in accordance with the packaging manufacturer's closure instructions; marking and certifying the reclosed package to indicate that it was opened and reclosed in accordance with paragraph (b)(5); and returning the package to the person from whom the agent obtained it, as soon as practicable. For a package containing a perishable hazardous material, the agent shall assist in resuming the safe and expeditious transportation of the package as soon as practicable after determining that the package presents no imminent hazard."

PHMSA Response:

In response to comments, and for the sake of clarity and better organization, the provisions formerly proposed as 49 CFR 109.3(b)(3) and 109.3(b)(4) have been revised and restructured. For packages that are marked, labeled, and documented to indicate the presence of a hazardous material, the agent must identify evidence that the package may not be otherwise in compliance with Federal hazmat law or the HMR before taking any further action. If there is a reasonable and articulable suspicion that the package contains hazardous materials and does not comply with the regulations, then an agent may open the package for further investigation.

In this final rule, the regulatory provisions originally located in § 109.3(a)–(c) of the NPRM have been reorganized into the following separate provisions: § 109.5 Opening of packages; § 109.7 Removal from transportation; § 109.9 Transportation for examination and analysis; § 109.11 Assistance of properly qualified personnel; § 109.13 Closing packages/safe resumption of transportation; and § 109.15 Termination. As PHMSA reviewed the comments received in response to the NPRM, it became evident that the regulatory provisions needed further clarification. Although the regulatory text derived almost entirely from the statutory language, it was necessary to provide additional detail and guidance as to how this authority will be implemented. Separating the provisions also makes the regulatory text easier to read and reference. Therefore, each significant action under this authority is laid out in its own section. For example, § 109.5 Opening of packages, provides the standard under which an agent may open a package: that is, a reasonable and articulable belief that a package offered for or in transportation may contain a hazardous material and does not conform to Federal hazmat law or the HMR. Under this standard, an agent may stop the movement of a package in transportation to gather information and learn the nature and contents of the package, and if necessary, the agent may open and examine any component of the package that is not immediately in contact with the hazardous materials.

DGAC further comments that the reference to "related packages" in proposed § 109.3(b)(4)(iii) may be read broadly to mean that an "entire load could be removed because the freight in the transport vehicle is destined to the same terminal or ultimate destination." Accordingly, DGAC recommends that (1) the term "related packages" in § 109.3(b)(4)(iii) be connected to the offeror of the package at issue (presumably so that only packages from that offeror could be considered "related packages" subject to removal), and that (2) the "articulable belief" standard be connected to each package that is being removed. Further, DGAC asserts that the phrase "in a shipment or freight container" in paragraph (b)(4)(iii) "creates a conflict in terminology" that "could be resolved by deleting the words."

PHMSA Response:

Although the term "related packages" comes directly from Section 7118, the agency agrees that it is connected to the objectively reasonable and articulable belief standard that an imminent hazard exists. This provision will serve to deal with situations in which there are a number of packages that appear to have been prepared by a single offeror or appear to present a similar hazard. PHMSA agrees, however, that the term "related packages" requires more explanation. A definition of "related packages" has been added to the regulatory text in § 109.1 to respond to DGAC's concern that related packages share some common connection and undergo the same standard of a reasonable and articulable belief that related packages may pose an imminent hazard in order to be removed. "Related packages" is now defined to mean "any packages in a shipment, series or group of packages that can be traced to a common nexus of facts, including, but not limited to: The same offeror or packaging manufacturer; the same hazard communications information (marking, labeling, shipping documentation); present a similar hazard; or other reasonable and articulable facts that may lead an agent to believe such packages may pose an imminent hazard." Packages that are located within the same trailer, freight container, unit load device, etc. as a package removed subject to this enhanced authority without additional

facts to substantiate its nexus to an imminent hazard are not 'related packages' for purposes of removal. The related packages must also demonstrate that they may pose an imminent hazard. They must exhibit a commonality or nexus of origin, which may include, but are not limited to, a common offeror, package manufacturer, marking, labeling, shipping documentation, hazard communications, *etc.*

D. Proposed § 109.3(b)(4)—Custody and Detention of Package

DGAC, Ecolab, FedEx, and National Association of Chemical Distributors (NACD) questioned who is the responsible person at each step of the inspection process in proposed § 109.3. For example, if a DOT agent removes a package and related packages from transportation in accordance with proposed § 109.3(b)(4), is he then responsible for the safe handling of those packages? Moreover, if an agent directs a package to be moved to another location for testing, is that agent responsible for compliance with the HMR rather than the carrier from whom it has been taken? To answer questions regarding custody, we created the following chart breaking down each subparagraph under proposed § 109.3(b)(4) (now located at §§ 109.5–109.13) and determined who has custody during each potential stage of the inspection process.

Regulatory provision	Enforcement action	Who has custody?
§ 109.5(a)(1)	When an agent has an objectively reasonable and articulable belief that a package offered for or in transportation in commerce may contain a hazardous material and the agent has reason to believe that such a package does not otherwise comply with this chapter, the agent may: (1) Stop movement of the package in transportation and gather information from any person to learn the nature and contents of the package;	Person in possession, as this step is only information gathering.
§ 109.5(a)(2)	Open any overpack, outer packaging, or other component of the package that is not immediately adjacent to the hazardous materials contained in the package and examine the inner packaging(s) or packaging components.	DOT.
§ 109.7	An agent may remove a package and related packages in a shipment or a freight container from transportation in commerce for up to forty-eight (48) hours when the agent has an objectively reasonable and articulable belief that the packages may pose an imminent hazard, provided the agent records this belief in writing as soon as practicable and provides written notification stating the reason for removal to the person in possession.	DOT.
§ 109.9	When an agent determines that further examination of a package is necessary; if conflicting information exists; or to otherwise determine that a package is in compliance with this chapter, the agent may: (1) Direct the offeror of the package, or other person responsible for the package, to have the hazardous material transported to a facility where the material will be examined and analyzed; (2) Direct the packaging manufacturer or tester of the packaging to have the package transported to a facility where the packaging will be tested in accordance with the HMR; or (3) Direct the carrier to transport the package to a facility capable of conducting such examination and analysis.	Person in possession (carrier) if carrier is transporting to the facility; once the carrier is done transporting package, it is the responsibility of the offeror since it is its package.
§ 109.11	If an agent is not properly qualified to perform a function, or when safety might otherwise be compromised by the agent's performance of a function that is essential for the agent's exercise of authority under this part, the agent may authorize properly qualified personnel to assist in the activities conducted under this part.	Person in possession (carrier) if carrier is transporting to the facility; once the carrier has transported the package, it is the responsibility of the offeror since it is its package.
§ 109.13(a)(1)–(2)	*No imminent hazard found.* If, after an agent exercises an authority under § 109.5, an imminent hazard is not found to exist, and the package is otherwise found to be compliant, the agent shall: (1) Assist in preparing the package for safe and prompt transportation, when practicable, by reclosing the package in accordance with the packaging manufacturer's closure instructions; (2) Mark and certify the reclosed package to indicate that it was opened and reclosed in accordance with this part;	DOT.
§ 109.13(a)(3)	Return the package to the person from whom the agent obtained it, as soon as practicable; and	Custody of person in possession at the time of the enhanced inspection.

Regulatory provision	Enforcement action	Who has custody?
§ 109.13(a)(4)	For a package containing a perishable hazardous material, the agent shall assist in resuming the safe and expeditious transportation of the package as soon as practicable after determining that the package presents no imminent hazard.	DOT (during repackaging until it is returned).
§ 109.13(b)	If, after an agent exercises an authority under § 109.5, and an imminent hazard is found to exist, the Administrator or his/her designee may issue an out-of-service order prohibiting the movement of the package until the package has been brought into compliance [with Subchapter C of Title 49 of the Code of Federal Regulations. Upon receipt of the out-of-service order, the person in possession of [(carrier)], or responsible for [(offeror)], the package shall remove the package from transportation until it is brought into compliance.	Person in possession (carrier) or person responsible for the package (offeror).
§ 109.13(c)	A package subject to an out-of-service order may be moved from the place where it was found to present an imminent hazard to the nearest location where the package can be brought into compliance, provided that the agent that issued the out-of-service order is notified before the move.	Person transporting.
§ 109.13(d)	*Noncompliant package.* If, after an agent exercises an authority under § 109.5, a package is found to contain hazardous material in violation of this Chapter, but does not present an imminent hazard, the agent shall not close the package and is under no obligation to bring the package into compliance.	Person in possession (carrier) or person responsible for the package (offeror).

E. Opening and Reclosing Outer Packagings as Proposed

Inner vs. Outer Packaging

In accordance with Section 7118, in § 109.3(b)(4)(ii) of the NPRM, PHMSA proposed to, in certain circumstances, authorize DOT agents to open "any overpack, outer packaging, freight container, or other component of the package that is not immediately adjacent to the hazardous materials contained in the package." For example, a combination packaging could consist of a fiberboard box (the outer component) and glass or plastic bottles or jugs (the inner components). Reclosing the package would be done in accordance with the manufacturer's closure instructions. Here, the original fiberboard box would likely be re-taped or when re-taping is not possible, the bottles and jugs could be overpacked in another suitable outer packaging component.

UPS comments that it would be difficult for an agent to determine what is inner vs. outer packaging, especially since hazmat may not be properly packaged and may not have an inner packaging. UPS proposes to modify this section of the NPRM, which is now finalized as § 109.5(a)(2), to read, "Ascertain through careful inspection whether the contents of the package are contained in single packaging or combination packaging; whether the contents are a hazardous article that may be handled safely; or whether the contents are loose within the packaging in a condition that would be unsafe if the packaging is opened. If the agent determines it is safe to do so, he may open any overpack, outer packaging, freight container, or other component of the package that is not immediately adjacent to the hazardous materials contained in the package and examine the inner packaging(s) or packaging components."

PHMSA Response:

UPS raises a valid concern. This is an important consideration that would serve as a helpful guideline for DOT agents in the operational manual. This comment has been incorporated into the manual.

Radioactive Packages

RSCC commented that inspection procedures should recognize that even the outer layers of certain declared packages (*i.e.,* radiopharmaceutical) should never be breached because of the sterile and radioactive nature of the contents of packages. Similarly, Ameriflight commented that Certain Class 7 (Radioactive) shipments, particularly material used in cancer therapy, are extremely time critical, and delays of even an hour have an immediate impact on the usability of the product.

PHMSA Response:

Initially, it is important to remember that properly prepared packages will not be opened by DOT agents simply to see what may be inside the packages in question. As is currently the case, the information relied upon may come from a variety of sources, including but not limited to the following: package appearance, conflicting information between the shipping papers and the markings on the package, identity of offeror or carrier, an odor emanating from a container, and anonymous tips. The agent will conduct a careful inspection of the package to determine if there is an inner and outer package and if the outer package can be opened. If the agent believes there is reasonable suspicion to open a package, he/she will request the person in possession to open the package. Only if refused, which rarely, if ever, happens, would the explicit statutory authority codified by this rule be invoked by the agent to open the package.

If a shipment is not properly prepared for transportation the agent will order the package out-of-service until the deficiencies are fixed by the offeror and the package is suitable for transportation as required by the HMR. Opening of the package will be the last resort in an overall effort to identify the contents and correcting the violations of the HMR. The Department has no intention of allowing agents to physically handle radioactive materials while in transportation. Moreover, DOT or other agencies charged with enforcing these regulations cannot be responsible for delays of time-sensitive materials that have not been properly prepared for shipment under the HMR.

Perishable Hazmat/Pharmaceuticals

NACD states that for pharmaceuticals and other perishable materials, if packages have been breached, customers will not accept them, even if they have DOT seals. Receivers in these cases demand original, manufacturer seals and consider any evidence of tampering, even if by government inspectors, as possible cause for the materials to be contaminated and unusable.

PHMSA Response:

Properly marked, labeled and packaged pharmaceuticals and other perishable hazardous materials will not be breached or delayed, as there would be no reason for them to undergo further scrutiny. If a pharmaceutical package is improperly packaged or otherwise not in compliance, it should not continue in transportation, with or without this enhanced enforcement authority. Needless to say, distributors of sensitive pharmaceuticals and other perishable materials must be especially diligent in adhering to the packaging, marking and labeling requirements to avoid package breaches that result from errors in the packaging requirements and communication standards that are integral to the HMR. Because the scope of the package opening authority has been limited in the final rule, unless an agent believes that the packages do not conform to the HMR, these packages will not be opened.

Perishable Medical Products

RSCC comments that products in this industry are specially packed, marked, labeled, and documented, and the carriers operate under special DOT controls and limitations. Thus, both the shipper and carrier can respond to questions about subject packages in a prompt manner, without the need to delay or stop the shipment.

PHMSA Response:

This rule is designed to address those packages that are undeclared or not properly packaged, marked, labeled, or documented. Packages such as those described in RSSC's comment, *i.e.,* compliant shipments, would not fall under scrutiny and no delays would occur to those shipments.

We also agree with RSCC's comment that declared nuclear medical packages must be handled with the utmost care and caution, and have provided accordingly in the internal operations manual. We cannot, however, except radioactive medical packages from the scope of this authority, as radioactive materials are regulated under the HMR. Radioactive materials also cannot be exempted from the regulations by operation of a special permit under 49 CFR part 107 subpart B, as special permits are issued on the basis that there is an equivalent level of safety or it is consistent with the public interest and protects against the risks to life and property should radioactive materials be exempted from the HMR for the purposes of this regulation. This burden would not be met. The rule, as provided in the definition of perishable hazardous material and through § 109.13(a)(4), sufficiently addresses the expeditious treatment of perishable hazardous material.

Leaking Packages

ATA comments that if an agent opens a package that is leaking and suspected of containing undeclared hazardous materials, it would be inconsistent with the statutory limitation on opening packages that are adjacent to the hazardous materials. If a package has visible signs of a breach and release of hazardous materials, then by definition the outer packaging is now adjacent to the hazardous materials and may not be opened by the agent. In such a situation, for the safety of all present, ATA recommends only a trained emergency responder should handle the leaking package.

PHMSA Response:

We agree that a package with visible indications of a breach and/or release of hazardous materials may not be opened. Evidence of leakage, however, may be one of the facts leading an agent to detain the shipment, remove it from transportation altogether, or if the case requires, seek immediate assistance from emergency responders. Again, we must reiterate that DOT agents will not open packages simply because the authority exists in the rule, without parameters and justifying circumstances, especially at the cost of safety of all individuals present in such situations. We have added appropriate precautions to the operating manual.

Reclosing Packages

RIPA states that there is potential conflict between reclosing a package in accordance with manufacturer's instructions and following a PHMSA-approved method: When an agent opens a freight container or, in some cases, an overpack, that is not covered by the HMR, he will not have access to closure instructions, since none are required by DOT. In these cases, the agent will have no option but to close the package in accordance with an approved PHMSA method. RIPA suggests proposed § 109(b)(4)(v) be amended by adding a new second sentence, as follows: "If a package does not meet a DOT specification or UN standard, the agent shall close it using an approved PHMSA closure method."

PHMSA Response:

If a package is not packaged or otherwise prepared in accordance with existing regulatory requirements under the HMR and the Federal hazmat law, DOT is under no obligation to bring the non-compliant package into compliance. In § 109.13, each possible re-closure scenario is discussed in detail. It appears that RIPA's concern is sufficiently addressed in the newly created provision, § 109.13(a), when it has been determined that the package is in compliance and an imminent hazard is found not to exist: "The agent shall assist in preparing the package for safe and prompt transportation, when practicable, by reclosing the package in accordance with the packaging manufacturer's closure instructions or other appropriate closure method. Packages certified and reclosed subject to Part 109 will not be subject to testing requirements under 49 CFR Part 178 until the package has reached its final destination, or is returned to the offeror or packaging manufacturer." In instances where the opening and re-closing is done at a fixed facility, where the offeror is present, the agent shall assist in preparing the package for transportation. On occasions where the opening and reclosing of a package that is later determined to be compliant is in the possession of a carrier, and the offeror is not present, the agent will reclose the package accordingly to resume transportation.

Dow poses the question: If a package is opened, tested, re-closed and then found to be leaking when it is offered back into transportation or when it arrives at the consignee's facility, who will ultimately be liable? UPS comments that an agent should have full responsibility for reclosing a shipment, not just assisting, as a carrier may lack the expertise regarding packaging requirements.

PHMSA Response:

First, with respect to Dow's questions regarding reclosing a package following testing, PHMSA must clarify that only packages that are opened subject to § 109.5, *i.e.,* opened and examined at the time of inspection, will be reclosed by, or with the assistance of, the DOT agent. Packages that are ordered transported to another facility for further examination and testing under § 109.9, will not be reclosed by the agent. The offeror of the package at the time of testing will be responsible for preparing the package for continued transportation or disposal upon conclusion of testing, as appropriate. Simply stated, a package ordered for

testing to determine its chemical composition will not be reclosed and offered back into transportation under this authority.

Second, with respect to UPS's proposal that the agent assumes full responsibility for reclosing a shipment following an enhanced inspection, should a carrier lack the expertise regarding packaging requirements, the agent will be able to make sure the packaging is properly reclosed. Agents may need to reclose or assist in reclosing packages during inspections involving carriers more so than when an inspection takes place at a fixed facility (such as a manufacturer's or offeror's facility) where the offeror, who is the party responsible for the proper packaging and hazard communication, is present to reclose the package.

As we explained in detail in the NPRM, DOT does not bear financial responsibility for private costs related to the exercise of enhanced inspection and enforcement authority. Under the discretionary function exception, the Federal Tort Claims Act (FTCA) would bar any common law tort action against the Department based on such activities. *See* 73 FR 57287.

F. Ordering the Transportation of a Package for Further Examination

ATA expresses concern that proposed § 109.3(b)(4)(iv), authorizing under certain circumstances, an agent to order the transportation of a package to a facility to be opened and examined, will lead to agents ordering motor carriers to transport undeclared hazardous materials shipments, or otherwise ordering motor carriers to move packages that are out of compliance with the HMR. ATA further contends that before ordering the further transportation of a package in accordance with proposed § 109.3(b)(4)(iv), the agent should have an objectively reasonable and articulable belief that the package may contain a hazardous material, and the same belief that the package may pose an imminent hazard. ATA states that this prerequisite is articulated in the enabling statute, while also requiring an agent to contemporaneously document his reasonable and articulable belief.

PHMSA Response:

The rule does not state, nor does it imply, that an agent will direct an undeclared hazmat shipment or a non-compliant hazardous material shipment to be transported. Only if the agent cannot determine the contents of the package, or if it would be more feasible to have the package contents analyzed elsewhere and to avoid further delays, would the package be transported to a facility capable of such further examination. If an imminent hazard is found to exist, a package will not be transported any further by anyone. It will be ordered out of service immediately. If the package posing an imminent hazard has been removed from a larger shipment, the remainder of the otherwise compliant shipment may continue in transportation.

Section 5121(c)(1)(E) states that an agent "as necessary, under terms and conditions specified by the Secretary, may order the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package to have the package transported to, opened, and the contents examined and analyzed, at a facility appropriate for the conduct of such examination and analysis * * *." An imminent hazard need not be present for an agent to order a package to be transported, opened, and examined. Section 5121(c)(1)(E) stands apart from § 5121(c)(1)(B) (which provides for the opening of packages) and (C) (which provides for the removal of packages from transportation when they may pose an imminent hazard), and thus is not a corollary of either provision. The statute states that, as necessary under specified terms and conditions, an agent may order the package to be moved. The corresponding regulatory provision, formerly § 109.3(b)(4)(iv) in the NPRM, has been revised in the final rule. In consideration of ATA's comment, PHMSA has attempted to specify the situations in which this authority may be used. This provision is now located at § 109.9, Transportation for examination and analysis, and states that if an agent determines that further examination of a package is necessary, if there is conflicting information, or if it is otherwise necessary to determine compliance of a package, the agent may direct a package to be transported to a facility for further examination and analysis.

An agent may consider removing a package from a shipment in transportation when he or she believes the package may pose an imminent hazard, but for some reason, the agent does not have all of the information necessary in order for his/her operating administration's qualifying official to make a determination of an imminent hazard. For example, there is conflicting or missing information about the material or packaging, or examination and analysis of the material or packaging is needed to determine compliance. In most situations, a removal is limited to 48 hours. Furthermore, exercising this authority will minimize the burden on commerce by allowing the rest of an otherwise conforming shipment to continue in transportation.

When an agent determines that further examination of the material is required, he or she may have the package transported to a testing facility. However, this authority will likely be used sparingly. For example, before deciding to use this authority, an agent will need to identify a facility capable of performing the proper examination and analysis and consider the facility's location, and whether the suspected package can be safely transported to the facility. In most instances, the agent should be able to identify a qualified facility based on his or her own professional experience and assistance from his/her operating administration.

IME questioned how any package presenting an imminent hazard can be ordered to be moved.

PHMSA Response:

This comment assumes that an imminent hazard is a prerequisite for the ordering of the transportation of the package for further examination; that § 109.3(b)(4)(iv) necessarily precedes (v). However, these regulatory provisions are not mutually inclusive. The purpose of § 109.3(b)(4) was to list all of the options available to an agent, to be used alone or in tandem with other provisions in § 109.3(b)(4). In the final rule, the regulatory text has been revised and reorganized to illustrate this point more clearly.

The point of these procedures is to provide a way for DOT to prevent and immediately address violations of the existing regulations that rise to the urgency of an imminent hazard. Proposed § 109.3(b)(4)(v) (now § 109.9) would likely come into play where an agent may not be able to determine immediately that a package is in compliance, or where there are indications that the labels on a package do not accurately reflect the contents, or where shipping papers are inconsistent with the package, etc. Nevertheless, the purpose of the provision is not to place an undue burden on a carrier by forcing it to transport a non-compliant package. Rather, it is an option for the agent when a conclusive examination cannot be made at the time the package is observed due to logistics, timing, location, or other similar factors; and in the interest of safety of all parties involved, it would be best to have the package opened, analyzed, or tested elsewhere.

Compensation for Costs in the Transportation and Testing of a Package

In the NPRM, PHMSA explained how responsibility for costs would be

determined if a package is ordered to be transported and analyzed at another facility pursuant to § 109.3(b)(4)(iv). The operating administration requiring the testing will pay for the transportation and analysis of the material if the package is found to be in compliance with the HMR. If the material is found to be packaged in violation of the HMR, the costs for the transportation and analysis of the material may be taken into consideration at the time any civil penalty is assessed against the party responsible for the violation (usually the offeror). ATA comments that the compensation of costs for the transportation and analysis of a subject package should be included in the regulatory text.

PHMSA Response:

We decline to adopt the compensation structure as part of the regulatory text, as it remains an administrative matter that is not integral to carry out subsections (c) (Inspections and investigations) and (d), (Emergency orders) of § 5121, which is the substantive focus of this authority and the basis for the Department's rulemaking authority. Once this regulation is in effect, DOT will not compensate parties for monetary losses incurred for packages subject to an emergency order as it is related to our exercise of inspection and enforcement authority. For a detailed discussion of the discretionary function exception under the Federal Tort Claims Act (FTCA), please see relevant portions of the NPRM. 73 FR 57287. The probability of packages projected to be found in compliance after opening is relatively low. These are projections, but it is likely that the numbers may be even lower once the regulation is implemented.

Directing a Retail Store Owner Not Engaged in the Transportation of Hazardous Materials to Move the Hazmat

A number of retail shipping store owners provided the same or similar comments. We refer to their comments under the group name, storefront retail owners. Storefront retail owners suggest that in a scenario where undeclared hazmat is found during an inspection at their stores, and should DOT direct store staff to move it, stores would face liability because they cannot legally or safely transport hazmat. National Alliance of Retail Ship Centers (NARSC) expressed similar concern that the rule may cause employees to repack or hold hazmat packages at retail shipping stores, or to transport such packages from store locations. NARSC states that such actions will cause stores to violate their leases, franchise agreements, and local zoning laws; transportation of hazmat is also beyond the scope of their abilities.

PHMSA Response:

We realize that retail shipping stores do not have the capability to transport hazardous materials. Our agents will not direct a carrier, business, or offeror to transport a questionable shipment where it is not a feasible and safe option, either because a facility is not equipped to do so, or if doing so would endanger the people in the area, or would otherwise exacerbate a potentially dangerous situation. When in doubt, retail shipping stores should contact the offeror to safely transport the package.

Notice to Offeror

Several commenters (ATA, Dow, Fed Ex, IME and MDS Norton) suggest that shippers and recipients should be notified immediately each time their packages are detained and/or opened. They suggest this could be done by sending an alert to the shipper's emergency response contact.

PHMSA Response:

We agree that notice should be given to the offeror and this type of provision has been incorporated into the operations manual. The operating administration will take every reasonable effort to immediately notify the recipient that the order has been issued and provide a copy of the order (without attachments) by facsimile or electronic mail. With regard to the person in possession of the package: Generally, the removal order and the sticker the agent affixes to the package(s) is adequate notification. However, when practicable, the agent should provide to the person with custody of the package copies of the documentation and evidence used to obtain the removal. With regard to the original offeror: If the person with custody and control of the package is not the original offeror, the agent should immediately take reasonable measures to notify the original offeror of the removal. In addition, reasonable measures should also be taken to supply the original offeror with copies of any documentation that was provided to the person with custody and control of the package. A telephone call, facsimile, or e-mail message are some examples of reasonable measures for satisfying the notification requirement.

NACD recommends that the agent provide immediate notification that the shipment will be held as well as how long it is expected to be held. This will allow the carrier to more effectively communicate with the shipper and receiver about the delay.

PHMSA Response:

We will make every effort to notify the offeror once a decision has been made to issue an emergency order and remove the package from transportation.

G. Liability for Undeclared and Non-Compliant Shipments Identified Through § 109.3 Inspections and Investigations

Liability of Retail Shipping Stores

Storefront retail owners contend that they face the risk of legal action from their customers if DOT inspectors conduct any inspection in their stores without a warrant or probable cause. Moreover, they state that allowing DOT to open and discover undeclared hazmat packages would cause them to be in violation of their lease agreements, local zoning laws, carrier contracts and franchise agreements.

Storefront retail owners further argue that the liability and expenses for non-compliant hazmat packages should be on the actual shipper, not on the business that serves as a drop-off location between the carriers and their customers. NARSC is concerned that the liability falls on store owners if the inspection of a package results in a damaged, delayed or canceled shipment. NARSC also states that retail stores are prohibited by carriers from shipping or accepting hazmat, but at the same time, required to accept drop-off packages from shippers for which the store becomes liable if these packages contain undeclared hazmat. And finally, storefront retail owners and NARSC suggest that a special classification be created for the retail shipping channel.

PHMSA Response:

With respect to the retail store owners' concern regarding DOT inspections without a warrant or probable cause, as stated previously in the NPRM, because the hazardous materials transportation industry is closely regulated, those engaged in the industry have a reduced expectation of privacy. *U.S.* v. *V–1 Oil Company,* 63 F.3d 909, 911 (9th Cir. 1995), *cert. denied,* 517 U.S. 1208 (1996). Therefore, DOT is authorized under 49 U.S.C. 5121(c) to conduct warrantless and unannounced inspections of an entity that offers or transports hazardous material in commerce to determine its level of compliance with the Federal hazmat law and HMR under the administrative search doctrine. *Id.* at 913. *See also* 73 FR 57285.

PHMSA understands the commenters' underlying concern for how this final rule may impact their daily operations.

As stated previously, DOT will not conduct investigative activities in unsuitable locations. Indeed, inspections at a retail shipping store may happen only in rare circumstances as the package opening authority may only be exercised during inspections arising under existing authority under the HMR and Federal Hazmat law. It is unclear how compliance with this final rule would violate store owners' private agreements or contracts, or conflict with local zoning laws; however, retail store owners may need to renegotiate agreements to accommodate compliance with this Federal regulation as necessary if they feel this final rule may impact such operations. It should be noted, however, that contractual negotiations between private parties and municipal land use policy are beyond the scope of this final rule.

The retail shipping stores face a situation similar to carriers in that because they are not the original offerors, they must rely on the information given to them by the shipper, but face the possibility of having to deal with a problem package while it is in their possession. The HMR generally do not apply to retail shipping stores that do not accept hazardous materials shipments. Retail shipping stores will not be responsible for unknowingly accepting hazmat shipments at their stores if there are no indications through marking, labeling, shipping documentation, or any other means in accepting the package indicating that it contains hazardous materials. The store may rely on information provided by the person offering the package for transportation unless it knows (or a reasonable person acting in the circumstances and exercising reasonable care would have knowledge) that the information provided is incorrect. If the retail shipping store accepts shipments that may contain hazardous material, its staff must be able to recognize such shipments and its proper handling or preparation of hazard communication. With that in mind, employees of such shipping stores are strongly recommended to receive training on the recognition of possible hazardous materials shipments.

Nonetheless, an offeror who fails to properly declare a shipment of hazardous materials bears the primary responsibility for a non-compliant or undeclared shipment. Whenever hazardous materials have not been shipped in accordance with the HMR, DOT will generally attempt to identify and bring an enforcement proceeding against the person who first caused the transportation of a non-compliant shipment. A special classification, therefore, is not necessary, as retail shipping stores are not offerors. If a retail shipping store discovers undeclared hazardous materials, it should contact the offeror immediately to retrieve the package and ship it accordingly.

Liability of Carriers

In that same vein, ATA comments that a motor carrier, who did not prepare the package and did not participate in the opening of the package, should not be held liable for injuries that result to inspectors or others in the vicinity of packages that are opened if the motor carrier did not knowingly accept the undeclared hazardous material for transportation and did not choose to participate in the opening of the package. Similarly, Ameriflight, LLC (Ameriflight) comments that air cargo operators are limited in their ability to assist in opening suspect packages because of privacy and delivery integrity concerns. Therefore, if an FAA inspector requires a package opening, it must be on FAA's authority alone, and the FAA must be prepared to assume liability for downstream problems such as items missing from high-value shipments.

PHMSA Response:

Refusing to open a package may be the carrier's prerogative, but that alone does not end a carrier's responsibility. Although a carrier may not knowingly accept undeclared hazmat, that in and of itself does not absolve a carrier from its existing obligations under the HMR. A carrier who transports hazmat in commerce may rely on information provided by the offeror unless the carrier knows, or a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror is incorrect. Therefore, a carrier cannot ignore a package that clearly does not contain what it claims to contain; is not packaged, marked, labeled, or documented properly; or otherwise raises red flags as to its contents. A carrier, as a person who transports hazardous material under 49 CFR 171.1(c), is subject to the existing requirements under the HMR (49 CFR 172.700) to be trained to recognize and identify hazardous materials, and have knowledge of emergency response information, self protection measures and accident prevention methods and procedures as it did before this regulation.

Air Carrier Industry

Air carriers in particular bear responsibility for accepting declared shipments of hazardous materials in violation of 49 CFR 175.30, which requires air carriers to conduct an inspection ensuring that the shipment is, among other things, within quantity limitations, accompanied by shipping papers that properly describe the material, and is marked, labeled and packaged in accordance with the HMR. An air carrier's failure to conduct a proper inspection could result in a violation of 49 CFR 175.30 or 175.3, which prohibits an air carrier from offering or accepting for transportation, or transportation aboard an aircraft, hazardous materials that are not prepared for shipment in accordance with 49 CFR part 175.

Packaging Manufacturers, Reconditioners, and Distributors

RIPA is concerned that packaging manufacturers, reconditioners, and distributors may be subject to DOT enforcement actions in the event of a hazardous materials release from packaging opened, closed and returned to transportation by a DOT agent.

PHMSA Response:

If a release is caused by a packaging failure, then the responsible party may face enforcement action under DOT's existing statutory authority (49 U.S.C. 5121). If there is evidence that a subsequent release was caused by the actions of a DOT agent, such evidence would be a defense to an enforcement action assigning blame for the failure upon the shipper or carrier. We reiterate: If a package complies with the HMR, it will not be stopped, opened, or put out of service. If a package is opened based upon an objectively reasonable and articulable belief that there is a violation of the HMR, and then deemed to be compliant upon further investigation, the package will be closed according to manufacturer's closing instructions or otherwise made safe for transportation and returned to the stream of commerce. If the package is found not to contain hazardous material, it will not require the same specified closures as a hazmat package, but will be closed as securely as possible and returned to the stream of commerce.

If a packaging was correctly manufactured, reconditioned, or distributed, there should be no further issues and there would likely be no reason for it to be opened, or subject to an emergency restriction, prohibition, or recall. However, if the package itself fails to contain the hazardous materials

as prescribed by the HMR, and there is a subsequent release, responsibility for the cause of the failure will have to be determined based upon all available information. We cannot, and must not, grant preemptive exemptions from responsibility to any party under the HMR, least of all in the abstract.

H. Comments Particular to Motor Carrier Industry

NACD expressed concern that enhanced inspections under this rule could result in FMCSA hours-of-service issues for drivers if these inspections take too long.

PHMSA Response:

We are mindful of hours-of-service considerations and will make every effort to ensure these inspections and investigations will cause a minimal interruption of time. As inspections generally occur at fixed facilities, the delay to one package should not delay any others, because it can be removed from the rest of the shipment, so there should be no effect on hours of service from exercising any authority under this rule. There is a negligible additional time added to inspections as a result of this rule, because agents always ask for packages to be opened and are rarely, if ever, refused. Additional time to open if refused will be only seconds.

ATA supports PHMSA's ability to issue out-of-service ("OOS") orders that prohibit the movement of a package that poses an imminent hazard until that package has been rendered safe for continued transportation. ATA also requests that any OOS orders should not be factored into a motor carrier's safety rating, nor should it be included in the motor carrier's hazardous materials OOS rate, which is used to determine a motor carrier's ability to obtain a federal hazardous materials safety permit under 49 CFR Part 385.

PHMSA Response:

Out-of-service orders (OOS) issued under this imminent hazard authority may affect a motor carrier's safety rating or its ability to obtain or renew a hazardous material safety permit under FMCSA's Safety Fitness Procedures (49 CFR Part 385). Violations that result in an OOS order are considered under FMCSA's current safety rating methodology and are also used to calculate OOS rates that are a qualifying factor for obtaining a hazardous material safety permit. *See* 49 CFR 385.7 (safety rating factors), 49 CFR part 385, App. B (Explanation of Safety Rating Process), and 49 CFR 385.407(a)(2)(iii) (What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?). Any single OOS order issued under this rule would not, alone, affect a carrier's safety rating or safety permit issuance. OOS orders issued under this rule, however, would be considered along with any other type of OOS order that the Agency or its State partners might issue for a serious safety violation committed by a motor carrier. The commenters seek to have OOS orders issued under authority of the final rule excluded from consideration. DOT's position is that these OOS orders should be considered in the same manner that FMCSA currently considers these types of serious violations. This regulation would not change the manner in which a motor carrier's HM OOS rate is calculated. Note that such OOS rates currently are examined only when a motor carrier is undergoing a compliance review or applying for an initial or renewed safety permit. Only carriers transporting certain types and amounts of HM must obtain an HM safety permit, which must be renewed every two years. 49 CFR 385.403; 49 CFR 385.419.

Objections to the consideration of these OOS criteria under the relevant FMCSA regulations are outside the scope of this rulemaking.

Former § 109.3(b)(4)(v)—Qualified Personnel To Assist (§ 109.11 Assistance of Properly Qualified Personnel)

ATA expresses concern regarding the possibility that an agent may "authorize qualified personnel to assist" in the opening of packages and their removal from transportation. ATA states that considering the scope of the training provided to motor carrier employees and the lack of appropriate personal protective equipment, motor carrier employees are not qualified to assist in such activities.

PHMSA Response:

As defined in § 109.1, "properly qualified personnel" refers to entities who are technically qualified to perform designated tasks necessary to assist in the opening, removing, testing, or transporting of packages. We agree, as a general matter, that many motor carrier employees would not be considered properly qualified personnel and would not be required to assist the agent in the above situations.

I. Drafting Corrections

UPS and DGAC point out that throughout most of the proposed regulatory text, we used the defined term "agent," however, in two places the terminology changes to "inspector." First, the commenters note that proposed § 109.3(b)(5) refers to an "inspector" returning a package found not to pose an imminent hazard and similarly, § 109.3(b)(6) references an "inspector" exercising an authority under paragraph (b)(4).

PHMSA Response:

We agree that cited references to the term "inspector" should be changed. For consistency, the term "inspector" has been replaced with the term "agent" throughout the final rule.

Noting the definitions of the terms "movement" and "transportation" in 49 CFR 171.8, DGAC comments that § 109.3(b)(6) "correctly cites 'movement' early in the text, and later cites 'transportation' which, if retained, would create an impossibility."

PHMSA Response:

The provision formerly located at proposed § 109.3(b)(6) is now § 109.13(b), Imminent hazard found. The HMR define "movement" as "the physical transfer of a hazardous material from one geographic location to another by rail car, aircraft, motor vehicle, or vessel." 49 CFR 171.8. The HMR define "transportation" as "the movement of property and loading, unloading, or storage incidental to that movement." *Id.* Further, the HMR provide that "[t]ransportation in commerce begins when a carrier takes physical possession of the hazardous material for the purpose of transporting it and continues [with certain exceptions] until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium." *Id.* at 171.1(c). The HMR also define "transportation" to include movement, as well as loading, unloading, and storage incidental to movement. *Id.* In other words, "movement" is actually one subset of actions or activities that comprise "transportation" and accordingly, the two terms as utilized in proposed § 109.3(b)(6) do not conflict.

If an imminent hazard is found to exist, pursuant to § 109.13(b), the Administrator may issue an out-of-service order prohibiting the "movement" of the package until the package has been brought into compliance. In other words, the immediate effect of an OOS order is to stop the further movement of the package (*i.e.,* stop the physical transfer of a package from one geographic location to another). The same paragraph further provides that upon receipt of the out-of-service order, the person in possession of, or responsible for, the package shall remove the package from "transportation" until it is brought into compliance. In other words, the package may not be moved, loaded, unloaded or stored incidental to transportation, or otherwise reenter the stream of commerce until it is brought into compliance. We also note that the

language of § 109.13(b) is consistent with the language of 49 U.S.C. 5121(c)(3) (providing for the safe and prompt "resumption of transportation" of a package found not to present an imminent hazard). Therefore, PHMSA believes the terminology used in the section is an accurate summation of how an OOS order should operate when this regulation goes into effect.

J. Proposed § 109.5—Emergency Orders

Who Issues Emergency Orders

DGAC expresses concern that DOT agencies may have differing views on the meaning and application of imminent hazard criteria and inspection procedures. Therefore, DGAC supports the concept of one place to appeal an emergency order. In addition, DGAC suggests there be an emergency contact available at the agency to address immediate issues related to emergency orders.

PHMSA Response:

The joint operations manual will provide guidance to address consistency in enforcement. Moreover, each operating administration will provide emergency contact information in conjunction with the issuance of emergency orders issued under Part 109.

Internal Agency Review of Decisions To Issue Emergency Orders

RSCC and AHS request more details about the internal system of review by DOT management and counsel before an emergency order is issued. In particular, AHS states that in the NPRM, an "Administrator" is defined to include "any person within an operating administration to whom an Administrator has delegated authority to carry out this part," which leads them to conclude that emergency order authority may be delegated down to the agent/inspector level without further review.

PHMSA Response:

Although each operating administration may make minor adjustments to the delegations to its enforcement personnel, there will always be at least two levels of review above an agent before an emergency order may be issued. Therefore, an agent who observes that a package may present an imminent hazard will document such a belief in writing. At the same time, he will be in contact with his first line supervisor. That first line supervisor will then contact the headquarters enforcement manager and the modal administration's Chief Counsel's office for consultation on whether an emergency order should be issued. At a minimum, there will be two levels of review above the agent's level before an emergency order is issued under this rule, and always in consultation with the appropriate Chief Counsel's office. The time it takes to issue an emergency order may vary by operating administration and the type of emergency order sought. For a leaking package, issuance of an emergency order may be issued nearly contemporaneously with the inspection. For more complicated situations, such as a recall of defective packaging, it may take several hours or days for DOT to complete the required due diligence to confirm an imminent hazard determination and authorize an emergency order.

There is also a defined appeal process in §§ 109.17 and 109.19 to ensure that the emergency order was not issued in error, and to present a respondent with the opportunity to challenge the agency's action once the emergency has been abated.

K. Out-of-Service Orders and Notification of the Agent

Proposed § 109.3(b)(6)(i), the substance of which is now located at § 109.17(b), provides that a package subject to an out-of-service order may be moved from the place where it was found to present an imminent hazard to the nearest location where it can be brought into compliance as long as the carrier notifies the agent who issued the OOS order. This is not a new regulatory requirement; rather, it gives the carrier the option of moving a package to the nearest location where it can be brought into compliance. DGAC proposes that this notification should be available anytime on a 24-hour basis.

PHMSA Response:

PHMSA agrees with this suggestion and has revised § 109.17(b) to reflect that an agent may be notified on a 24-hour basis before a package subject to an OOS order is moved. In imminent hazard situations, timeliness is of the utmost importance and the process of bringing an offending package to a location where the imminent hazard can be abated should not be unduly delayed. Accordingly, all parties should act expeditiously with respect to the offending package.

L. Miscellaneous Comments

Training

Ameriflight asks how the industry will be compensated for the extensive training that will be needed for operators and contract ground personnel to comply with this rule.

PHMSA Response:

It is unclear what Ameriflight envisions as additional training under the HMR for carriers when this rule becomes effective. We reiterate that this regulation creates no new regulatory requirements for carriers, offerors, and any other person subject to the HMR. Carriers will continue to be subject to training requirements under 49 CFR § 172.700 for operators and contract ground personnel performing hazmat functions, but this rule imposes no additional training requirement on persons subject to the HMR.

Limited Use of Enhanced Authority

NACD urges DOT to use this authority as sparingly as possible. If packages are properly marked, inspections to search for non-compliance inside should be limited as much as possible to prevent disruption. NACD also suggests that this authority only be exercised by certain operating administrations, such as FAA because many undeclared shipments are transported by air.

PHMSA Response:

PHMSA agrees with NACD that packages that are accompanied with shipping papers, properly marked, labeled, and packaged may raise no further concern and would likely not be opened to search for non-compliance. As stated previously, only when there are observable indications that the package may not be compliant (package appearance, conflicting information between the shipping papers and the markings on the package, identity of offeror or carrier, an odor emanating from a container, and anonymous tips) will it be subject to opening.

With the additional safeguard of a reasonable and articulable belief that a package does not comply with the regulations, only packages suspected of non-compliance may be opened. As stated previously, DOT generally operates under the assumption that it already possesses the implicit authority, by virtue of our enforcement authority, to open packages that the person in possession refuses to open without the passage of HMTSSRA. The statutory authority implemented in this final rule explicitly grants that authority. However, it is the experience of most enforcement programs that when asked to open a package, the regulated industry generally opens it voluntarily. Therefore, it appears that package opening component of this statutory authority will be used only rarely.

The procedures adopted in this final rule are intended to ensure that this enhanced enforcement authority is exercised judiciously and under carefully defined and controlled conditions. The rule makes clear that wholesale opening of packages is not allowed. DOT agents cannot and should

not open everything, as inspections would take much longer to conduct if this were the case. The statute limits opening to combination packagings only. This is primarily for the safety of the agent and those present during an inspection, as it could be dangerous to have individuals exposed to potentially unknown hazardous materials if allowed to open outer packaging right down to the material itself, such as opening a 55-gallon drum full of chemicals. By only opening packages that may contain hazardous materials and believed to be non-compliant, DOT is able to make better use of its enforcement staff while preserving the safety of all involved.

With respect to NACD's suggestion that the use of this authority be limited to certain operating administrations, PHMSA respectfully disagrees. The agency would not be serving the public interest by isolating this authority to certain modes of transportation while not remaining vigilant in all of them. Moreover, this would create an inequitable disparity in enforcement among the transportation industry.

Preemption

Some commenters (DGAC, ATA, IME, COSTHA) express concern that state entities may begin implementing this authority and believe that DOT should preempt state and local enforcement authority.

PHMSA Response:

As stated previously in the NPRM, the statute does not provide preemption authority. This enhanced enforcement authority under the statute is granted only to Federal agents.

Contractual Issues

ATA expressed concern that the rule does not address how contractual issues between motor carrier and shipper should be resolved in the event that freight is damaged or delayed during an enhanced inspection, or later refused by the offeror after such an inspection. ATA also suggests an alternate inspection process, moving the inspection to the consignor/consignee's facility.

PHMSA Response:

As a Federal agency charged with a safety mission, DOT does not endeavor to regulate private contractual matters between carriers and shippers. To the extent it is practicable, we agree that moving the inspection to the consignor/consignee's facility may be beneficial and will be attempted if practicable and if it may be accomplished without compromising the safety of those involved. The location of inspections will not change as a result of this regulation. All enforcement activities will continue to proceed as they do now. DOT agents will now have an extra tool to inspect compliance with the HMR, but the premise for conducting inspections (enforcement authority under 49 U.S.C. 5121), the locations at which they are conducted (generally fixed facilities), and the regulations under which the industry must comply (HMR), remained unchanged by this regulation.

Agents will continue to follow current operational procedures to conduct investigations and inspections. Although it is generally not a common practice for an agent to open a package during an investigation or inspection, this authority will allow them to do so, as necessary. Currently, most inspections are conducted at fixed facilities and do not involve disruption of a shipment while in transit; we do not foresee changes to this practice. Also, certain rule limitations and procedures such as opening only non-complaint packages; notification requirements and the 48 hour rule; and removal procedures allowing for a shipment to continue in transportation will effectively limit where and when a package will be opened. Again, the intention of this enhanced authority is not to unduly delay commerce without cause; rather, it is a calculated effort to detect non-compliant shipments that could potentially harm people, property or the environment.

V. Section-by-Section Analysis

In this final rule, PHMSA adds Part 109 to Title 49, Code of Federal Regulations, prescribing standards and procedures governing the exercise of enhanced inspection and enforcement authority by DOT operating administrations. Below is an analysis of the regulatory provisions.

Section 109.1 Definitions

This section contains a comprehensive set of definitions. PHMSA includes these definitions to clarify the meaning of important terms as they are used in the text of this proposed rule. Several terms introduce concepts new to the HMR. These definitions require further discussion as set forth below. As explained below, other terms defined in this rule are taken from the Federal hazmat law at 49 U.S.C. 5102 and are used with their statutory meaning.

Administrator and *Agent of the Secretary* or *agent* identify the parties authorized by delegation from the Secretary to carry out the functions of the proposed rule. *Administrator* is defined as the head official of each operating administration within DOT to whom the Secretary has delegated authority under 49 CFR part 1 and any person employed by an operating administration to whom the Administrator has delegated authority to implement this rule. Similarly, *Agent of the Secretary* or *agent* means a Federal officer or employee, including an inspector, investigator, or specialist authorized by the Secretary or Administrator to conduct inspections or investigations under the Federal hazmat law and HMR. Thus, the rule does not apply to state personnel.

Chief Safety Officer or *CSO* refers to the Assistant Administrator for PHMSA who is appointed in competitive service by the agency's Administrator. *See* 49 U.S.C. 108(e).

Emergency order is defined as an emergency restriction, prohibition, recall, or out-of-service (OOS) order set forth in writing. (The term "out-of-service order" is defined below.) An emergency order provides extraordinary relief to address imminent hazard circumstances, including the agency's ability to order a company to immediately discontinue any or all operations related to an unsafe condition or practice causing an imminent hazard.

Freight container is defined as it is defined in 49 CFR 171.8 with one minor modification—we have preceded the § 171.8 definition with the phrase "a package configured as"—to indicate that freight containers are considered packages within the scope of this regulation. It has been included in this section for clarity and ease of referral.

This final rule defines the new term *immediately adjacent* to the hazardous material contained in the package means a packaging that is in direct contact with the hazardous material, or otherwise serves as the primary means of containment of the hazardous material.

As defined by 49 U.S.C. 5102(5) *imminent hazard* means "the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment." 49 U.S.C. 5102(5). Restated, an imminent hazard exists when any condition is likely to result in serious injury or death, or significant property or environmental damage if not discontinued immediately. *Cf.* Sen. Rep. No. 98–424, at 12 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4785, 4796

(definition of "imminent hazard" under the Motor Carrier Safety Act).

In writing is defined as the written expression of any actions related to this part, rendered in paper or digital format, and delivered in person; via facsimile, commercial delivery, U.S. Mail, or electronically. Given the expedited schedule of actions in the implementation of this regulation, all parties must be given flexibility in the rendering of documentation.

This final rule includes the new term *objectively reasonable and articulable belief* and defines it as a belief based on discrete facts or indicia that provide a reasonable basis to believe or suspect that a shipment may contain a hazardous material. The NPRM includes a detailed discussion of the case law background and parameters of this standard, 73 FR 57285.

Out-of-service (OOS) order is defined as a written order issued by an agent of the Secretary prohibiting further movement or operation of an aircraft, vessel, motor vehicle, train, railcar, locomotive, transport vehicle, freight container, portable tank, or other package until certain conditions have been satisfied. An order is similar in concept and application to a special notice for repairs that FRA issues for freight cars, locomotives, passenger equipment, and track segments. *See* 49 CFR Part 216. OOS orders will essentially operate in the same way as FRA special notices in that an activity will be prohibited until all conditions for compliance are met. Similar to the OOS order provided for in this rule, FRA's regulations provide an appeal process for any party to whom a Special Notice for Repairs is issued to challenge the decision of the Inspector who issued the notice. *See* 49 CFR 216.17.

The definition covers transport vehicles and packages that are unsafe for further movement, requiring that the equipment be removed from transportation until repairs are made or safety conditions are met. PHMSA believes that an OOS order is appropriate when equipment or a shipment is unsafe for further service or presents an unreasonable or unacceptable risk to safety, creating an imminent hazard at a given instant.

Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of this subchapter. PHMSA has reconsidered the necessity of retaining a definition inconsistent with 49 CFR 171.8, and for purposes of clarity and consistency, the definition of "packaging" in this final rule is the same as the definition provided in 49 CFR 171.8.

Perishable hazardous material refers to a hazardous material that may experience accelerated decay, deterioration, or spoilage. We envision etiologic agents, such as biological products, infectious substances, medical waste, and toxins as perishable commodities that will require special handling; however, in response to comments requesting the expansion of the definition to include other hazardous materials relevant to the medical industry, the definition was modified from the proposed definition to include packages consigned for medical use in the prevention, treatment, or cure of a disease or condition in human beings or animals where expeditious shipment and delivery meet a critical medical need. We believe the definition remains broad enough to capture the types of hazardous material requiring expedited handling as prescribed by statute (49 U.S.C. 5121(c)(3)).

Properly qualified personnel means a company, partnership, proprietorship, or individual who is technically qualified to perform designated tasks necessary to assist an agent in inspecting, examining, opening, removing, testing, or transporting packages. A carrier would not be considered "properly qualified personnel" to assist in § 109.11; *e.g.,* a truck driver, an airline pilot, a railroad engineer, or a warehouse fork-lift operator would not be required to assist the agent in his capacity.

Remove means to keep a package from entering into the stream of transportation in commerce; to take a package out of the stream of transportation in commerce by physically detaining a package that was offered for transportation in commerce; or stopping a package from continuing in transportation in commerce. The term is defined to make clear that if a DOT agent has an objectively reasonable and articulable belief that a package may pose an imminent hazard, that agent is authorized to stop, detain, and prevent the further transportation in commerce of that package until the imminent hazard is abated. The basis for reasonable suspicion would center on the totality of circumstances experienced by the agent and the official's skill and experience in determining whether an investigative stop would be justified. *Brierley,* 781 F.2d at 841. As is currently the case, the information relied upon may come from a variety of sources, including but not limited to the following: Package appearance, conflicting information between the shipping papers and the markings on the package, identity of offeror or carrier, an odor emanating from a container, and anonymous tips.

Safe and expeditious refers to appropriate measures or procedures available to minimize any delays in resuming the movement of a perishable hazardous material.

The definition of *Trailer* was removed from this section in response to a comment citing its inconsistency with the definition of "trailer" in the FMCSRs.

§ 109.3 Inspections and Investigations

The regulatory provisions originally located in § 109.3(a)–(c) of the NPRM have now been reorganized into the following separate provisions: § 109.5 Opening of packages; § 109.7 Removal from transportation; § 109.9 Transportation for examination and analysis; § 109.11 Assistance of properly qualified personnel; § 109.13 Closing packages/safe resumption of transportation; § 109.15 Termination. As PHMSA reviewed the comments received in response to the NPRM, it became evident that the regulatory provisions needed further clarification. For clarity and ease of referral, most of the content proposed as § 109.3 and § 109.5 has been restructured into separate sections based on each action taken. Reorganizing the provisions of § 109.3 into several sections helps clarify the substance of the regulations, providing more details as to how each part of the authority will be implemented, the principles that may guide its execution, and the limitations that are required in using it. Although the regulatory text derived almost entirely from the statutory language, it was necessary to provide additional detail and guidance as to how this authority will be used. Therefore, each significant action under this authority is housed in its own section. For example, § 109.5 Opening of packages, provides the standard under which an agent may open a package: Reasonable and articulable belief that a packaged offered for or in transportation may contain a hazardous material and a reasonable and articulable belief that such a package does not comply with this Chapter. Under this standard an agent may stop the movement of a package in transportation to gather information and learn the nature and contents of the package, and if necessary, the agent may open and examine any component of the package that is not immediately in contact with the hazardous materials.

Section 109.3(a) remains unchanged from PHMSA's proposal; it states the Department's general authority to

initiate inspections and investigations as provided by 49 U.S.C. 5121(a), which has been delegated to the operating administrations. The operating administrations focus their inspection resources on the mode of transportation that they oversee. *See* 49 CFR 1.47(j)(1) (FAA), 1.49(s)(1) (FRA), 1.53(b)(1) (PHMSA), and 1.73(d)(1) (FMCSA). Nevertheless, operating administrations may "use their resources for DOT-wide purposes, such as inspections of shippers by all modes of transportation." 65 FR 49763, 49764 (Aug. 15, 2000). DOT believes that broad delegation authority is necessary to address cross-modal and intermodal issues to combat undeclared hazardous materials shipments. *Id.* at 49763. Accordingly, DOT inspectors are authorized to carry out the enhanced inspection and enforcement authority rule across different modes of transportation.

Section 109.3(b) is identical to PHMSA's proposal with the exception of the following language added to § 109.3(b)(2) (in italics): "Inspections and investigations are conducted by designated agents of the Secretary who will, upon [a person's] request, present their credentials for examinations. Such an agent is authorized to * * * [g]ather information by any reasonable means, including, but not limited to, gaining access to records and property (including packages) * * *." In addition to interviewing, photocopying, photographing, and audio and video recording during inspections or investigations, this language was included to specify what seems implicit in the Department's general authority—the ability to gather evidence and information through records and property, including access to the packages subject to inspection, and otherwise gather information to support enforcement activity. This is existing general authority under 49 U.S.C. 5121(a)–(b).

The inspections or investigations may be conducted at any pre-transportation or transportation facility wherever a hazardous material is offered, transported, loaded or unloaded, or stored incidental to the hazardous material movement, provided they are performed "at a reasonable time and in a reasonable manner." *See* 49 U.S.C. 5121(c)(1)(A); 49 CFR 171.1. PHMSA interprets "reasonable time" to mean an entity's regular business hours. PHMSA interprets "reasonable manner" to mean that DOT inspectors may gather information from any entity or source that is related to the transportation of hazardous materials in commerce whenever hazardous material operations or work connected to such operations are being performed. Although a new provision to DOT's statutory authority, § 5121(c)(1)(A) specifies DOT's ability to inspect records and property under its existing regulatory authority under § 5103(b)(1). Aside from § 5121(c)(1)(A), DOT continues to have authority to issue and serve administrative subpoenas for documents or other tangible things when such evidence is necessary to assist an inspection or investigation. Each operating administration will serve the subpoena in accordance with its own existing statutory or regulatory authority. *See* 14 CFR 13.3 (FAA), 49 CFR 105.45–.55 (PHMSA), 49 CFR 209.7 (FRA), and 49 U.S.C. 502(d), 5121, and 31133(a)(4) (FMCSA). PHMSA believes that this provision enables DOT to gather information from any source, including the offeror, carrier, packaging manufacturer or tester responsible for the shipment, to learn about the nature of the contents of the package. This process promotes communication and cooperation by all concerned parties and enables the Department to detect and deter undeclared hazardous material shipments and declared shipments that are not in compliance with the Federal hazmat law or the HMR.

§ 109.5 Opening of Packages

What was proposed as § 109.3(b)(4) in the NPRM is now located at § 109.5, Opening of packages. This provision implements the authority conferred by 49 U.S.C. 5121(c)(1) to enable DOT agents to take enhanced inspection and enforcement action. The most significant revision since the publication of the NPRM is the addition of a second criterion to justify the opening of a package. Section 109.5(a) requires, in addition to the requirement in the NPRM, that an agent have an objectively reasonable and articulable belief that a package may contain hazardous material, that an agent also have an objectively reasonable and articulable reason to believe that the package does not otherwise comply with the Federal hazmat law. If such facts exist, then an agent may stop the movement of the package in transportation to gather more information; or he may open the outer packaging of the package that is not immediately in contact with the hazardous material. Shipments such as plastic bottles or drums that are in direct contact with a hazardous material will not be opened pursuant to this authority.

Proposed § 109.3(b)(4)(iii) stated that an agent may remove the package and related packages in a shipment or a freight container from transportation in commerce when the agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard, provided the agent records this belief in writing as soon as practicable. The substance of this provision is now located in its separate section at § 109.7, Removal from transportation. This section implements 49 U.S.C. 5121(c)(1)(C) by permitting a DOT agent to remove from transportation in commerce a package (including a freight container) or related packages when the agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard. PHMSA intends to employ this remedy when necessary to suspend or restrict the transportation of a shipment that is deemed unsafe. Should this condition exist, the agent must document for his or her supervising official the basis for removing the package from transportation as soon as practicable, including the findings that the shipment contained a hazardous material and the identified imminent hazard. The documentation requirement safeguards the inspection and enforcement process by requiring DOT to specifically describe the hazard present and substantiate the need to remove the shipment from the stream of commerce. The documentation will chronicle the activities and events culminating in removing the package from transportation. The documentation must provide sufficient justification to pursue further investigation into the contents of a package. This section further provides that an agent must limit this removal to a maximum 48-hour period in order to determine whether the package may pose an imminent hazard. The 48-hour window begins when the written order is issued to the person with custody and control of the package. This limitation was added in response to a comment regarding the delay of packages subject to OOS orders. Dow states that packages that are taken out of service, opened and inspected, and then later found compliant will result in shipment delay and shutdown of customer processes. DGAC expresses similar concern about extended delays that may result from each instance where a package is removed or goods are stopped in transit, because the package is effectively placed out of service. PHMSA agrees that a removal under these circumstances should be limited in time in order to provide carriers with a date certain as to when packages may resume transportation if brought into compliance. Forty-eight hours serves as

a workable timeframe for terms of an OOS order to be addressed, or enough time for an imminent hazard investigation to be completed.

In addition, agents must present written notification stating the reason for removal to the person in possession of the package to be removed. A notification provision was added because the removal of a package from transportation due to an imminent hazard is inherently an emergency situation. Accordingly, the affected party must be promptly informed about the action taken so that it may begin to take immediate corrective action.

§ 109.9 Transportation for Examination and Analysis

Proposed § 109.3(b)(4)(iv) stated that an agent may order the person in possession of, or responsible for, the package to have it transported to, opened, and the contents examined and analyzed by, a facility capable of conducting such examination and analysis. The substance of this provision is now located at § 109.9, Transportation for examination and analysis. This section has been revised in response to comments requesting greater detail as to how and when a package may be ordered to be transported for further examination and analysis. As stated in § 109.9(a), a package may be ordered to be transported to an appropriate facility if it requires further examination, presents conflicting information, or if additional investigation is not possible on the immediate premises.

This section implements 49 U.S.C. 5121(c)(1)(E), which provides that under terms and conditions specified by the Secretary, an agent may order the party in possession of the package, or otherwise responsible for the shipment, to have it transported to, opened, and examined at an appropriate facility if the agent determines that it is not practicable to examine the contents of a package at the time and location of the stop. This provision enables DOT to facilitate learning about the nature of the product inside the shipment by permitting delivery of the shipment to a facility where its contents can be identified. PHMSA intends for DOT to employ this remedy only when an on-site inspection is inadequate or a facility has the sophisticated personnel, equipment, and information technology to assist in the inspection or investigation. Although removal of a package for further analysis is new authority provided by statute to work in conjunction with package opening, this provision is a simply new method to enforce existing statutory authority, which is to ensure the safe transportation of hazardous materials.

Under proposed § 109.3(b)(4)(v), properly qualified personnel may be asked to assist DOT when the agents open, detain, or remove a shipment, if it is possible that a package may experience a leak, spill, or release. There was an error in the NPRM with regard to § 109.4(b)(iv); the last subparagraph of § 109.3(b) was identified as (iv) when it should have been (v). This provision is now located at § 109.11, Assistance of properly qualified personnel, and also states that if an agent is not properly qualified to perform a function, or if safety might be compromised, an agent may authorize the assistance of properly qualified personnel. This section was revised in response to a comment requesting further clarification regarding the circumstances in which properly qualified personnel would be asked to assist.

§ 109.13 Closing Packages and Safe Resumption of Transportation

Closure of opened packages and their return to transportation remained an issue of great interest among commenters. Many commenters had questions as to how packages would be reclosed, who would reclose them, and how the packages would reenter the stream of commerce. In formulating responses to these comments, the agency decided that a significant revision of this provision was necessary.

Proposed § 109.3(b)(5)–(6) attempted to cover the reclosing process and the resumption of transportation, but without much success. Details were lacking and all possible scenarios were not addressed. The content of these two sections were parsed out in what is now § 109.13, Closing packages and safe resumption of transportation. The first provision, § 109.13(a), entitled *No imminent hazard found,* addresses what happens if no imminent hazard is found and the package contains hazardous material that is otherwise found to be compliant. If an imminent hazard is not found, an agent will assist in reclosing the package in accordance with the packaging manufacturer's closure instructions or other appropriate method; mark and certify the package as opened by an identified Federal agent and reclosed under this part; and return the package from whom it was obtained. Packages containing perishable hazardous material will be given expeditious treatment after it is determined there is no imminent hazard.

Section 109.13(b), entitled *Imminent hazard found,* addresses the situation in which an imminent hazard is found. In the event of an imminent hazard, an out-of-service order will be issued, prohibiting the movement of the package until it has been brought into compliance. The package will not be reclosed by a DOT agent because a non-compliant package posing an imminent hazard will not be permitted to enter into, or continue in, transportation. Moreover, DOT is not obligated to bring an offeror's package into compliance, as it is the offeror's responsibility to maintain compliance for its shipments. The recipient of the OOS order must remove the package from transportation until it is brought into compliance. Although this was implicit in the operation of emergency orders, it was necessary to articulate the possibility nonetheless. This language did not exist in the NPRM, but upon reconsideration of this section, it was added for clarity.

Section 109.13(c), entitled *Package does not contain hazardous material,* addresses the situation in which a package is opened and does not contain hazardous material. The agent will securely close the package, mark and certify its opening and closing by a Federal agent, and return the package to transportation. Because there is no hazardous material at issue, there would be no further packaging or reclosing obligations and the package may continue in transportation.

Section 109.13(d), entitled *Package contains hazardous materials not in compliance with this Chapter,* presents the final possibility when a package is opened: If a package contains hazardous material not in compliance with Federal hazmat law or the HMR. If the opening of a package reveals noncompliant hazmat that does not pose an imminent hazard, the agent will not close the package as there is no obligation to bring that package into compliance.

The Department's operating administrations will not be responsible for bringing an otherwise non-compliant package into compliance and resuming its movement in commerce. If the package does not conform to the HMR at the time of inspection, the fact that a DOT official opened it in the course of an inspection or investigation will not make DOT or its agent responsible for bringing the package into compliance.

Section 109.15 Termination, (former § 109.3(c)) states that the operating administration will close the investigative file and inform the subject party of the decision when the agency determines that no further action is necessary, and that DOT will notify respondent that the file has been closed without prejudice to further investigation. The substance of this

provision is now located at § 109.15, Termination, and includes language that reserves civil enforcement at a later time as is necessary to carry out the Federal hazmat law.

§ 109.17 Emergency Orders

Proposed § 109.5 Emergency orders, which implements 49 U.S.C. 5121(d), authorizes DOT operating administrations to issue or impose emergency restrictions, prohibitions, OOS orders, and recalls. The predicate for issuing an emergency order is a violation of Federal hazmat law or the HMR, or an unsafe condition or practice, whether or not it violates an existing statutory or regulatory requirement, which amounts to or is causing an imminent hazard. PHMSA believes that such an extraordinary remedy is necessary to address emergency situations or circumstances involving a hazard of death, illness, or injury to persons affected by an imminent hazard. *Cf. United Transp. Union* v. *Lewis,* 699 F.2d 1109, 1113 (11th Cir. 1983) (FRA emergency order authority is necessary to abate unsafe conditions or practices that extend to hazard of death or injury to persons); 49 U.S.C. 46105(c) (FAA is authorized to issue orders to meet existing emergency relating to safety in air commerce); 49 U.S.C. 521(b)(5) (FMCSA permitted to order a motor carrier OOS when vehicle or operation constitutes an imminent hazard to safety, *i.e.,* "substantially increases the likelihood of serious injury or death if not discontinued immediately").

The Department intends that each operating administration issue an emergency order only after an inspection, investigation, testing, or research determines that an imminent hazard exists that requires exercising this enforcement tool to eliminate the particular hazard and protect public safety. The order must articulate a sufficient factual basis that addresses the emergency situation warranting prompt prohibitive action. The operating administrations will have authority to take immediate measures to address a particular safety or security threat.

As proposed, the provisions addressing emergency orders were located at § 109.5 as well as in § 109.3(b)(6). In the final rule, PHMSA has decided to bring all matters regarding emergency orders into the same location, § 109.17 Emergency Orders. Proposed § 109.3(b)(6), now located at § 109.17(a), addresses the general criteria for when an Administrator may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders when an imminent hazard is present. Under this authority, the agency may order a company to immediately discontinue any or all operations based on any unsafe condition or practice causing an imminent hazard. An emergency order identifying the terms and conditions of such a restriction or prohibition may also prescribe necessary actions to abate the imminent hazard before operations may be resumed.

In the NPRM, the procedures for an OOS order were located at proposed § 109.3(b)(6), following the package opening authority, in the section under inspection and investigation. This provision is now located at § 109.17(b), where it makes better sense to have OOS orders organized as a subtopic of emergency orders. Section 109.17(b) authorizes the Administrator of each operating administration, or his/her designee, to issue an OOS order prohibiting the movement of a package until the imminent hazard is abated and the package has been brought into compliance with the HMR. Consequently, if an agent determines that a package presents an imminent hazard, the carrier or other person in possession of, or responsible for, the package must remove the package from transportation until it is brought into compliance with the HMR. OOS orders ensure that if a package presents an imminent hazard, immediate action is taken to abate that hazard. Proposed§ 109.3(b)(6)(i), now located at § 109.17(b)(2), provides that a package subject to an OOS order may be moved from the place where it is first discovered to present an imminent hazard to the nearest location where remedial action can be taken to abate the hazard and bring the package into compliance with the HMR, provided that before the move, the agent issuing the OOS order is notified of the planned move on a 24-hour basis.

Proposed § 109.3(b)(6)(ii), now located at § 109.17(b)(3), requires that the recipient of an OOS order notify the agent who issued the order when the package is brought into compliance with the HMR.

Proposed § 109.3 (b)(6)(iii), now located at § 109.17(b)(4), provides an appeal process for a recipient of an OOS order to challenge the issuance of the order. The appeal process for OOS orders is consistent with the appeal process proposed for other types of emergency orders set forth in § 109.17, discussed below.

Proposed § 109.5(a), now located at § 109.17(a), outlines the critical elements that must be established before an agency may issue an emergency order. Principally, the order must be in writing and describe the violation, condition or practice that is causing the imminent hazard; enumerate the terms and conditions of the order; be circumscribed to abate the imminent hazard; and inform the recipient that it may seek administrative review of the order by filing a petition with PHMSA's CSO. In other words, the order must be narrowly tailored to the discrete and specific safety hazard and identify the corrective action available to remedy the hazard. Due to the urgent nature of the action, a petitioner will have 20 calendar days to file the petition after the emergency order is issued. *See* 49 U.S.C. 5121(d)(3). This provision ensures that the operating administrations employ uniform procedures and standards when issuing emergency orders and provides a degree of certainty and predictability to the regulated community about the requisite elements to establish a prima facie emergency order.

Proposed § 109.5(a)(4), now located at § 109.17(a)(4), was revised to provide notice regarding a formal hearing request in accordance with 5 U.S.C. 554. A recipient must provide the material facts in dispute giving rise to the request for a hearing. PHMSA has also added § 109.17(a)(5) in the final regulatory text, which references § 109.19(f) for filing and service requirements. All documents related to a petition for review must be filed with DOT Docket Operations and served on all relevant parties, as detailed in § 109.19(f).

Proposed § 109.7, Emergency Recalls, is now located at § 109.17(c) so that the procedures for all agency actions addressing emergency situations may be found in the same section. This provision implements 49 U.S.C. 5121(d). Generally, PHMSA received new recall authority in HMSSTRA to work hand-in-hand with our previous authority under 49 U.S.C. 5103(b)(1)(A)(iii) to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Specifically, PHMSA, in consultation with relevant operating administrations, will recall packagings, containers, or package components which were improperly designed, manufactured, fabricated, inspected, marked, maintained, reconditioned, repaired, or tested but sold as qualified DOT packages, containers, or packaging components for use in the transportation of hazardous materials in commerce.

§ 109.19 Petitions for Review of Emergency Orders

PHMSA provides a party with administrative due process rights to seek redress of an emergency order, and thus, proposed § 109.5(b), now located at § 109.19 Petitions for review of emergency orders, sets forth requirements for filing a petition for administrative review of an emergency order. The petition must: (1) Be in writing; (2) specifically state which part of the emergency order is being appealed; and (3) indicate whether a formal administrative hearing is requested. If a petitioner requests a hearing, the party must detail the material facts in dispute giving rise to the hearing request. In this final rule, § 109.19(a)(4) (which was proposed as § 109.5(b)(4) in the NPRM), now references the service and filing requirements of § 109.19(f) instead of providing separate instructions in this paragraph as originally proposed.

Proposed § 109.5(c), now located at § 109.19(b), provides that the Office of Chief Counsel of the operating administration that issued the emergency order may file a response, including appropriate pleadings, with the CSO within five days after receiving the petition. PHMSA believes this short turnaround is adequate to enable the issuing operating administration to present evidence and argument supporting the emergency order. PHMSA notes that Congress mandated that DOT must resolve the petition within 30 days of its receipt unless the operating administration issues a subsequent order extending the original order, pending review of the petition. *See* 49 U.S.C. 5121(d)(4).

Proposed § 109.5(d), now located at § 109.19(c), provides that the PHMSA CSO will review the petition and response and issue a decision within 30 days upon receipt of the petition if the petitioner does not request a formal hearing or the petition fails to assert material facts in dispute. The CSO's decision constitutes final agency action in this instance. Alternatively, if the petition contains a request for a formal hearing and states material facts in dispute, the CSO will assign the petition to DOT's Office of Hearings. PHMSA thus designates its CSO as the first line of review of emergency orders. It is possible that the PHMSA CSO may amend, affirm, lift, modify, stay, or vacate the emergency order upon review. An additional provision was added in the final regulatory text in § 109.19(c)(1) under the CSO's responsibilities for cases in which a hearing is requested. Unless the CSO issues an order determining no material facts are in dispute and will be decided on the merits, a formal hearing request will be deemed assigned to the Office of Hearings three calendar days after the CSO receives it. This internal mechanism will ensure that the Office of Hearings has sufficient time to complete the hearing process and aid the agency in meeting the statutory requirement of 30 days to act on a petition for review.

PHMSA believes that its CSO should serve as the primary adjudicator of petitions. Designating a single decision maker to handle all petitions will promote consistency in the application of review standards. The CSO is the lead safety authority in PHMSA, which is the agency that issues the HMR, interprets the Federal hazmat law and its implementing regulations, and oversees DOT's hazardous materials transportation program.

Proposed §§ 109.5(e)–(h), now located at §§ 109.19(d)–(g) set out the administrative hearing procedures that the Department's Office of Hearings will employ. Upon receiving the petition from the CSO, the Chief Administrative Law Judge will assign it to an Administrative Law Judge (ALJ), who will schedule and conduct an "on the record" hearing under 5 U.S.C. 554, 556, and 557. PHMSA believes that a petitioner should be afforded a formal hearing that addresses the merits of a petition to ensure that a record is created in a proceeding that will form the basis for final agency action and judicial review, if necessary. The ALJ process is not new; DOT currently utilizes it for enforcement proceedings. The timeline for which the ALJ proceedings must begin and conclude are new, however, as 49 U.S.C. 5121(d)(4) mandates petitions for review must be adjudicated within 30 days of filing. Thus, the ALJ must issue a report and recommendation within 25 days after receipt of the petition for review by the Chief Safety Officer.

Proposed § 109.5(g), entitled "Service," is now located at § 109.19(f) and entitled "Filing and service." This section also provides that all documents must be filed with DOT Docket Operations, and identifies the parties which must be served. PHMSA believes one location for filing and service requirements of all documents makes the regulatory text more consistent and easier to understand.

Proposed § 109.5(e), now located at § 109.19(d), provides that an ALJ may administer oaths and affirmations, issue subpoenas as authorized by each operating administration's regulations, enable the parties to engage in discovery, and conduct settlement conferences and hearings to resolve disputed factual issues. PHMSA expects ALJs to conduct efficient and expeditious proceedings, including controlling discovery actions, to enable the parties to obtain relevant information and present material arguments at a hearing within the time parameters established. Proposed § 109.5(f), now located at § 109.19(e), permits a petitioner to appear in person or through an authorized representative. The representative need not be an attorney. The operating administration, however, would be represented by an attorney from its Office of Chief Counsel. Proposed § 109.5(g), now located at § 109.19(f), delineates the service rules governing the emergency order and review process. Generally, parties may effect service by electronic transmission via e-mail (with the pertinent document in Adobe PDF format attached) or facsimile, certified or registered mail, or personal delivery. Additionally, the operating administration that issued the emergency order must identify the list of persons, including the Department's docket management system, to receive the order and serve it by "hand delivery," unless such delivery is not practicable.

Proposed § 109.5(h), now located at § 109.19(g), requires the ALJ to issue a report and recommendation when the record is closed. The decision must contain factual findings and legal conclusions based on legal authorities and evidence presented on the record, which is part of an ALJ's existing authority. Critically, the decision must be issued within 25 days after the CSO receives the petition, which is a new requirement under the statute. Under proposed § 109.5(i), now located at § 109.19(h), which codifies 49 U.S.C. 5121(d)(4), the emergency order will no longer be effective if the ALJ or CSO has not ruled on the petition within 30 days of the CSO's receipt of the petition, unless the Administrator who issued the emergency order determines in writing that the imminent hazard continues to exist. The order then remains in effect pending the disposition of the petition unless stayed or modified by the Administrator. PHMSA maintains that this provision implementing new regulatory authority to issue emergency orders on the basis of an imminent hazard is necessary to ensure that the order is extended to abate the imminent hazard.

Proposed § 109.5(j), now located at § 109.19(i), provides that an aggrieved party may file a petition for reconsideration of the ALJ's report and

recommendation within one day of the issuance of the decision. This is an existing provision of DOT regulations for parties seeking reconsideration of agency action. The CSO then must issue a final agency decision no later than 30 days from the receipt of the petition for review, unless a subsequent emergency order is issued. In that case, the CSO has three calendar days to render the decision after receiving the petition for reconsideration. The CSO's decision on the merits of a petition for reconsideration constitutes final agency action.

Proposed § 109.5(k), now located at § 109.19(j) enables an aggrieved party to seek judicial review of either the CSO's administrative decision or the CSO's adoption of the ALJ's report and recommendation (final agency action). Consistent with existing remedies, judicial review is available in an appropriate U.S. Court of Appeals under 49 U.S.C. 5127, 49 U.S.C. 20114(c), 28 U.S.C. 2342, and 5 U.S.C. 701–706. All parties should note that the filing of a petition will not stay or modify the force and effect of final agency action unless otherwise ordered by the appropriate U.S. Court of Appeals.

Proposed § 109.5(l), now located at § 109.19(k), specifies the computation of time in the adjudications process.

§ 109.21 Remedies Generally

In addition to seeking relief in Federal court with respect to an imminent hazard, this section defines the need for general remedies available through litigation. An Administrator may request the Attorney General to bring an action in the appropriate U.S. district court for all other necessary or appropriate relief, including, but not limited to, injunctive relief, punitive damages, and assessment of civil penalties as provided by 49 U.S.C. 5122(a). Proposed § 109.9, now located at § 109.21, authorizes an Administrator to request DOJ to bring a cause of action in the appropriate U.S. district court seeking legal and equitable relief, including civil penalties, punitive damages, temporary restraining orders, and preliminary and permanent injunctions, to enforce the Hazmat Law, HMR, or an order, special permit, or approval issued. DOT's ability to request DOJ's assistance to petition for injunctive relief in district court to enforce the Federal hazmat law is an existing remedy.

Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5103(b) which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce and under the authority of 49 U.S.C. 5121(e). The final rule would revise PHMSA's inspection and enforcement procedures in PHMSA's regulations to implement 49 U.S.C. 5121(c) and (d), as amended by HMTSSRA. Specifically, this final rule implements the enhanced inspection and enforcement authority mandated by Section 7118 by enabling DOT to open, detain, and remove packages from transportation where appropriate, and issue emergency orders limiting or restricting packages from transportation. The final rule carries out the statutory mandate and clarifies DOT's role and responsibilities in ensuring that hazardous materials are being safely transported and promoting the regulated community's understanding and compliance with regulatory requirements applicable to specific situations and operations.

B. Executive Orders 12866, 13563, and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget consistent with Executive Orders 12866 and 13563. This rule is also significant under the Regulatory Policies and Procedures of the DOT (44 FR 11034). We completed a final regulatory evaluation and placed it in the docket for this rulemaking. This final rule finalizes 49 CFR Part 109, which contains regulations on DOT inspection and investigation procedures. These regulations are not part of the HMR, which govern the transportation of hazmat, thus they do not carry any additional compliance requirements or costs for entities that must comply with the HMR. It is possible, however, that some carriers or shippers, who in the absence of this rule would have refused to open a package when requested, may experience delays that they would not have otherwise faced. DOT is not aware of any cases of shippers or carriers refusing to open packages and so anticipates that these costs will be minimal.

C. Executive Orders 13132 and 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). As amended by HMTSSRA, 49 U.S.C. 5125(i) provides that the preemption provisions in Federal hazardous material transportation law do "not apply to any procedure * * * utilized by a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material." Accordingly, this final rule has no preemptive effect on State, local, or Indian tribe enforcement procedures and penalties, and preparation of a federalism assessment is not warranted.

This final rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have significant impact on a substantial number of small entities. Based on the assessment in the regulatory evaluation I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. This final rule applies to offerors and carriers of hazardous materials, some of which are small entities; however, there will not be any economic impact on any person who complies with Federal hazardous materials law and the regulations and orders issued under that law.

Potentially affected small entities. The provisions in this final rule will apply to persons who perform, or cause to be performed, functions related to the transportation of hazardous materials in transportation in commerce. This includes offerors of hazardous materials and persons in physical control of a hazardous material during transportation in commerce. Such persons may primarily include motor carriers, air carriers, vessel operators, rail carriers, temporary storage facilities, and intermodal transfer facilities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of "small business" has the same meaning as under the Small Business Act (15 CFR parts 631–657c). Therefore, since no

such special definition has been established, PHMSA employs the thresholds (published in 13 CFR 121.201) of 1,500 employees for air carriers (NAICS Subgroup 481), 500 employees for rail carriers (NAICS Subgroup 482), 500 employees for vessel operators (NAICS Subgroup 483), $18.5 million in revenues for motor carriers (NAICS Subgroup 484), and $18.5 million in revenues for warehousing and storage companies (NAICS Subgroup 493). Of the approximately 116,000 entities to which this final rule would apply (104,000 of which are motor carriers), we estimate that about 90 percent are small entities.

Potential cost impacts. This final rule finalizes 49 CFR part 109, which contains regulations on DOT inspection and investigation procedures. These regulations are not part of the HMR, which govern the transportation of hazmat, thus they do not carry any additional compliance requirements or costs for entities that must comply with the HMR. It is possible, however, that some carriers or shippers, who in the absence of this rule would have refused to open a package when requested, may experience delays that they would not have otherwise faced. DOT is not aware of any cases of shippers or carriers refusing to open packages and so anticipates that these costs will be minimal.

Alternate proposals for small business. Because this final rule addresses a Congressional mandate, we have limited latitude in defining alternative courses of action. The option of taking no action would be both inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement. Failure to implement the new authority will perpetuate the problem of undeclared hazardous material shipments and resulting incidents or releases. It will also leave PHMSA and other operating administrations without an effective plan to abate an imminent safety hazard.

E. Paperwork Reduction Act

PHMSA has analyzed this final rule in accordance with the Paperwork Reduction Act of 1995 (PRA). The PRA requires Federal agencies to minimize the paperwork burden imposed on the American public by ensuring maximum utility and quality of federal information, ensuring the use of information technology to improve government performance, and improving the federal government's accountability for managing information collection activities. This final rule contains no new information collection requirements subject to the PRA.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. The final rule will not result in annual costs of $141.3 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the proposed rule.

G. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires Federal agencies to analyze proposed actions to determine whether an action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) the need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

Congress enacted HMTSSRA in part to combat the problem of undeclared hazardous materials shipments. The broader authority of HMTSSRA allows the Department to identify hazardous materials shipments and to determine whether those shipments are made in accordance with the HMR. Congress determined that this authority would equip DOT officials, law enforcement, and inspection personnel with the necessary tools to accurately determine whether hazardous materials are being transported safely and in accordance with the relevant law and regulations. *See* Background section of the preamble to this final rule, supra.

2. Alternatives

Because this final rule addresses a Congressional mandate, we have limited latitude in defining alternative courses of action. The option of taking no action would be both inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement. Failure to implement the new authority will perpetuate the problem of undeclared hazardous material shipments and resulting incidents or releases. It will also leave PHMSA and other operating administrations without an effective plan to abate an imminent safety hazard.

3. Analysis of Environmental Impacts

The selected alternative could result in decreasing the likelihood of an incident, or a release of hazardous material, *e.g.,* explosives, flammables, or corrosives. These hazardous materials could ignite, leak, or react with other material, thereby causing fires and explosions in confined spaces such as aircraft or vessels. If such incidents occurred while an aircraft or vessel is in transportation, the consequences would likely threaten human health and the environment. If hazardous material shipments are not properly marked, labeled, packaged, and handled, every person who comes into contact with the shipment could be at risk. Emergency responders would not be able to extinguish a fire in the most effective and timely manner because an undeclared shipment would not contain the correct hazard communications, thus possibly exacerbating the situation or prolonging the public's exposure to a release.

4. Consultations and Public Comment

Before preparing this final rule, we invited all interested persons to offer comments on topics related to this final rule at public meetings and in response to the published NPRM. We received no comments regarding environmental concerns.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document, RIN 2137–AE13, can be used to cross-reference this action with the Unified Agenda.

I. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

List of Subjects in 49 CFR Part 109

Definitions, Inspections and investigations, Emergency orders, Imminent hazards, Remedies generally.

The Rule

■ In consideration of the foregoing, PHMSA adds a new part 109 to Title 49, Subtitle B, Chapter 1, Subchapter A to read as follows:

PART 109—DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS PROCEDURAL REGULATIONS FOR OPENING OF PACKAGES, EMERGENCY ORDERS, AND EMERGENCY RECALLS

Subpart A—Definitions

Sec.
109.1 Definitions.

Subpart B—Inspections and investigations

109.3 Inspections and investigations.
109.5 Opening of packages.
109.7 Removal from transportation.
109.9 Transportation for examination and analysis.
109.11 Assistance of properly qualified personnel.
109.13 Closing packages/safe resumption of transportation.
109.15 Termination.

Subpart C—Emergency Orders

109.17 Emergency orders.
109.19 Petitions for review of emergency orders.
109.21 Remedies generally.

Authority: 49 U.S.C. §§ 5101–5128, 44701; Pub. L. 101–410 § 4 (28 U.S.C. 2461 note); Pub. L. 104–121 §§ 212–213; Pub. L. 104–134 § 31001; 49 CFR 1.45, 1.53.

Subpart A—Definitions

§ 109.1 Definitions.

For purposes of this part, all terms defined in 49 U.S.C. 5102 are used in their statutory meaning. Other terms used in this part are defined as follows:

Administrator means the head of any operating administration within the Department of Transportation, and includes the Administrators of the Federal Aviation Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, and Pipeline and Hazardous Materials Safety Administration, to whom the Secretary has delegated authority in part 1 of this title, and any person within an operating administration to whom an Administrator has delegated authority to carry out this part.

Agent of the Secretary or *agent* means a Federal officer, employee, or agent authorized by the Secretary to conduct inspections or investigations under the Federal hazardous material transportation law.

Chief Safety Officer or *CSO* means the Assistant Administrator of the Pipeline and Hazardous Materials Safety Administration.

Emergency order means an emergency restriction, prohibition, recall, or out-of-service order set forth in writing.

Freight container means a package configured as a reusable container that has a volume of 64 cubic feet or more, designed and constructed to permit being lifted with its contents intact and intended primarily for containment of smaller packages (in unit form) during transportation.

Immediately adjacent means a packaging that is in direct contact with the hazardous material or is otherwise the primary means of containment of the hazardous material.

Imminent hazard means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

In writing means unless otherwise specified, the written expression of any actions related to this part, rendered in paper or digital format, and delivered in person; via facsimile, commercial delivery, U.S. Mail; or electronically.

Objectively reasonable and articulable belief means a belief based on particularized and identifiable facts that provide an objective basis to believe or suspect that a package may contain a hazardous material.

Out-of-service order means a written requirement issued by the Secretary, or a designee, that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, portable tank, or other package not be moved or cease operations until specified conditions have been met.

Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of this subchapter. For radioactive materials packaging, see § 173.403 of subchapter C of this chapter.

Perishable hazardous material means a hazardous material that is subject to significant risk of speedy decay, deterioration, or spoilage, or hazardous materials consigned for medical use, in the prevention, treatment, or cure of a disease or condition in human beings or animals where expeditious shipment and delivery meets a critical medical need.

Properly qualified personnel means a company, partnership, proprietorship, or individual who is technically qualified to perform designated tasks necessary to assist an agent in inspecting, examining, opening, removing, testing, or transporting packages.

Related packages means any packages in a shipment, series or group of packages that can be traced to a common nexus of facts, including, but not limited to: The same offeror or packaging manufacturer; the same hazard communications information (marking, labeling, shipping documentation); or other reasonable and articulable facts that may lead an agent to believe such packages are related to a package that may pose an imminent hazard. Packages that are located within the same trailer, freight container, unit load device, *etc.* as a package removed subject to this enhanced authority without additional facts to substantiate its nexus to an imminent hazard are not "related packages" for purposes of removal. The related packages must also demonstrate that they may pose an imminent hazard. They must exhibit a commonality or nexus of origin, which may include, but are not limited to, a common offeror, package manufacturer, marking, labeling, shipping documentation, hazard communications, *etc.*

Remove means to keep a package from entering the stream of transportation in commerce; to take a package out of the stream of transportation in commerce by physically detaining a package that was offered for transportation in commerce; or stopping a package from continuing in transportation in commerce.

Safe and expeditious means prudent measures or procedures designed to minimize delay.

Subpart B—Inspections and Investigations

§ 109.3 Inspections and Investigations.

(a) *General authority.* An Administrator may initiate an inspection or investigation to determine compliance with Federal hazardous material transportation law, or a regulation, order, special permit, or approval prescribed or issued under the Federal hazardous material transportation law, or any court decree or order relating thereto.

(b) *Inspections and investigations.* Inspections and investigations are conducted by designated agents of the Secretary who will, upon request, present their credentials for examination. Such an agent is authorized to:

(1) Administer oaths and receive affirmations in any matter under investigation.

(2) Gather information by any reasonable means, including, but not limited to, gaining access to records and property (including packages), interviewing, photocopying, photographing, and video- and audio-recording in a reasonable manner.

(3) Serve subpoenas for the production of documents or other tangible evidence if, on the basis of information available to the agent, the evidence is relevant to a determination of compliance with the Federal hazardous material transportation law, regulation, order, special permit, or approval prescribed or issued under the Federal hazardous material transportation law, or any court decree or order relating thereto. Service of a subpoena shall be in accordance with the requirements of the agent's operating administration as set forth in 14 CFR 13.3 (Federal Aviation Administration); 49 CFR 209.7 (Federal Railroad Administration), 49 U.S.C. 502(d), 5121(a) (Federal Motor Carrier Safety Administration), and 49 CFR 105.45–105.55 (Pipeline and Hazardous Materials Safety Administration).

§ 109.5 Opening of packages.

(a) When an agent has an objectively reasonable and articulable belief that a package offered for or in transportation in commerce may contain a hazardous material and that such a package does not otherwise comply with this chapter, the agent may—

(1) Stop movement of the package in transportation and gather information from any person to learn the nature and contents of the package;

(2) Open any overpack, outer packaging, or other component of the package that is not immediately adjacent to the hazardous materials contained in the package and examine the inner packaging(s) or packaging components.

§ 109.7 Removal from transportation.

An agent may remove a package and related packages in a shipment or a freight container from transportation in commerce for up to forty-eight (48) hours when the agent has an objectively reasonable and articulable belief that the packages may pose an imminent hazard. The agent must record this belief in writing as soon as practicable and provide written notification stating the reason for removal to the person in possession.

§ 109.9 Transportation for examination and analysis.

(a) An agent may direct a package to be transported to a facility for examination and analysis when the agent determines that:

(1) Further examination of the package is necessary to evaluate whether the package conforms to subchapter C of this chapter;

(2) Conflicting information concerning the package exists; or

(3) Additional investigation is not possible on the immediate premises.

(b) In the event of a determination in accordance with paragraph (a) of this section, an agent may:

(1) Direct the offeror of the package, or other person responsible for the package, to have the package transported to a facility where the material may be examined and analyzed;

(2) Direct the packaging manufacturer or tester of the packaging to have the package transported to a facility where the packaging may be tested in accordance with the HMR; or

(3) Direct the carrier to transport the package to a facility capable of conducting such examination and analysis.

(c) The 48-hour removal period provided in § 109.7 may be extended in writing by the Administrator pending the conclusion of examination and analysis under this section.

§ 109.11 Assistance of properly qualified personnel.

An agent may authorize properly qualified personnel to assist in the activities conducted under this part if the agent is not properly qualified to perform a function that is essential to the agent's exercise of authority under this part or when safety might otherwise be compromised by the agent's performance of such a function.

§ 109.13 Closing packages and safe resumption of transportation.

(a) *No imminent hazard found.* If, after an agent exercises an authority under § 109.5, the agent finds that no imminent hazard exists, and the package otherwise conforms to applicable requirements in subchapter C of this chapter, the agent will:

(1) Assist in preparing the package for safe and prompt transportation, when practicable, by reclosing the package in accordance with the packaging manufacturer's closure instructions or other appropriate closure method;

(2) Mark and certify the reclosed package to indicate that it was opened and reclosed in accordance with this part;

(3) Return the package to the person from whom the agent obtained it, as soon as practicable; and

(4) For a package containing a perishable hazardous material, assist in resuming the safe and expeditious transportation of the package as soon as practicable after determining that the package presents no imminent hazard.

(b) *Imminent hazard found.* If an imminent hazard is found to exist after an agent exercises an authority under § 109.5, the Administrator or his/her designee may issue an out-of-service order prohibiting the movement of the package until the package has been brought into compliance with subchapter C of this chapter. Upon receipt of the out-of-service order, the person in possession of, or responsible for, the package must remove the package from transportation until it is brought into compliance.

(c) *Package does not contain hazardous material.* If, after an agent exercises an authority under § 109.5, the agent finds that a package does not contain a hazardous material, the agent shall securely close the package, mark and certify the reclosed package to indicate that it was opened and reclosed, and return the package to transportation.

(d) *Non-compliant package.* If, after an agent exercises an authority under § 109.5, the agent finds that a package contains hazardous material and does not conform to requirements in subchapter C of this chapter, but does not present an imminent hazard, the agent will return the package to the person in possession of the package at the time the non-compliance is discovered for appropriate corrective action. A non-compliant package may not continue in transportation until all identified non-compliance issues are resolved.

§ 109.15 Termination.

When the facts disclosed by an investigation indicate that further action is not warranted under this Part at the time, the Administrator will close the investigation without prejudice to further investigation and notify the person being investigated of the decision. Nothing herein precludes civil enforcement action at a later time related to the findings of the investigation.

Subpart C—Emergency Orders

§ 109.17 Emergency Orders.

(a) *Determination of imminent hazard.* When an Administrator determines that a violation of a provision of the Federal hazardous

material transportation law, or a regulation or order prescribed under that law, or an unsafe condition or practice, constitutes or is causing an imminent hazard, as defined in § 109.1, the Administrator may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without advance notice or an opportunity for a hearing. The basis for any action taken under this section shall be set forth in writing which must—

(1) Describe the violation, condition, or practice that constitutes or is causing the imminent hazard;

(2) Set forth the terms and conditions of the emergency order;

(3) Be limited to the extent necessary to abate the imminent hazard; and,

(4) Advise the recipient that, within 20 calendar days of the date the order is issued, recipient may request review; and that any request for a formal hearing in accordance with 5 U.S.C. 554 must set forth the material facts in dispute giving rise to the request for a hearing; and

(5) Set forth the filing and service requirements contained in § 109.19(f), including the address of DOT Docket Operations and of all persons to be served with the petition for review.

(b) *Out-of-service order.* An out-of-service order is issued to prohibit the movement of an aircraft, vessel, motor vehicle, train, railcar, locomotive, transport unit, transport vehicle, or other vehicle, or a freight container, portable tank, or other package until specified conditions of the out-of-service order have been met.

(1) Upon receipt of an out-of-service order, the person in possession of, or responsible for, the package must remove the package from transportation until it is brought into compliance with the out-of-service order.

(2) A package subject to an out-of-service order may be moved from the place where it was found to present an imminent hazard to the nearest location where the package can be brought into compliance, provided that the agent who issued the out-of-service order is notified before the move.

(3) The recipient of the out-of-service order must notify the operating administration that issued the order when the package is brought into compliance.

(4) Upon receipt of an out-of-service order, a recipient may appeal the decision of the agent issuing the order to PHMSA's Chief Safety Officer. A petition for review of an out-of-service order must meet the requirements of § 109.19.

(c) *Recalls.* PHMSA's Associate Administrator, Office of Hazardous Materials Safety, may issue an emergency order mandating the immediate recall of any packaging, packaging component, or container certified, represented, marked, or sold as qualified for use in the transportation of hazardous materials in commerce when the continued use of such item would constitute an imminent hazard. All petitions for review of such an emergency order will be governed by the procedures set forth at § 109.19.

§ 109.19 Petitions for review of emergency orders.

(a) *Petitions for review.* A petition for review must—

(1) Be in writing;

(2) State with particularity each part of the emergency order that is sought to be amended or rescinded and include all information, evidence and arguments in support thereof;

(3) State whether a formal hearing in accordance with 5 U.S.C. 554 is requested, and, if so, the material facts in dispute giving rise to the request for a hearing; and,

(4) Be filed and served in accordance with § 109.19(f).

(b) *Response to the petition for review.* An attorney designated by the Office of Chief Counsel of the operating administration issuing the emergency order may file and serve, in accordance with § 109.19(f), a response, including appropriate pleadings, within five calendar days of receipt of the petition by the Chief Counsel of the operating administration issuing the emergency order.

(c) *Chief Safety Officer Responsibilities.*

(1) *Hearing requested.* Upon receipt of a petition for review of an emergency order that includes a formal hearing request and states material facts in dispute, the Chief Safety Officer shall immediately assign the petition to the Office of Hearings. Unless the Chief Safety Officer issues an order stating that the petition fails to set forth material facts in dispute and will be decided under paragraph (c)(2) of this section, a petition for review including a formal hearing request will be deemed assigned to the Office of Hearings three calendar days after the Chief Safety Officer receives it.

(2) *No hearing requested.* For a petition for review of an emergency order that does not include a formal hearing request or fails to state material facts in dispute, the Chief Safety Officer shall issue an administrative decision on the merits within 30 days of receipt of the petition. The Chief Safety Officer's decision constitutes final agency action.

(d) *Hearings.* Formal hearings shall be conducted by an Administrative Law Judge assigned by the Chief Administrative Law Judge of the Office of Hearings. The Administrative Law Judge may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by the appropriate agency regulations (49 CFR 209.7, 49 CFR 105.45, 14 CFR 13.3, and 49 U.S.C. 502 and 31133);

(3) Adopt the relevant Federal Rules of Civil Procedure for the United States District Courts for the procedures governing the hearings when appropriate;

(4) Adopt the relevant Federal Rules of Evidence for United States Courts and Magistrates for the submission of evidence when appropriate;

(5) Take or cause depositions to be taken;

(6) Examine witnesses at the hearing;

(7) Rule on offers of proof and receive relevant evidence;

(8) Convene, recess, adjourn or otherwise regulate the course of the hearing;

(9) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and,

(10) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of an issue raised therein.

(e) *Parties.* The petitioner may appear and be heard in person or by an authorized representative. The operating administration issuing the emergency order shall be represented by an attorney designated by its respective Office of Chief Counsel.

(f) *Filing and service.* (1) Each petition, pleading, motion, notice, order, or other document submitted in connection with an order issued under this subpart must be filed (commercially delivered or submitted electronically) with: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. All documents filed will be published on the Department's docket management Web site, *http://www.regulations.gov.* The emergency order shall state the above filing requirements and the address of DOT Docket Operations.

(2) Service. Each document filed in accordance with paragraph (f)(1) of this section must be concurrently served upon the following persons:

(i) Chief Safety Officer (*Attn:* Office of Chief Counsel, PHC), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey

Avenue, SE., East Building, Washington, DC 20590 (*facsimile:* 202–366–7041) (*electronic mail: PHMSAChiefCounsel@dot.gov*);

(ii) The Chief Counsel of the operating administration issuing the emergency order;

(iii) If the petition for review requests a formal hearing, the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, M–20, Room E12–320, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*facsimile:* 202–366–7536).

(iv) Service shall be made personally, by commercial delivery service, or by electronic means if consented to in writing by the party to be served, except as otherwise provided herein. The emergency order shall state all relevant service requirements and list the persons to be served and may be updated as necessary. The emergency order shall also be published in the **Federal Register** as soon as practicable after its issuance.

(3) Certificate of service. Each order, pleading, motion, notice, or other document shall be accompanied by a certificate of service specifying the manner in which and the date on which service was made.

(4) The emergency order shall be served by "hand delivery," unless such delivery is not practicable, or by electronic means if consented to in writing by the party to be served.

(5) Service upon a person's duly authorized representative, agent for service, or an organization's president constitutes service upon that person.

(g) *Report and recommendation.* The Administrative Law Judge shall issue a report and recommendation at the close of the record. The report and recommendation shall:

(1) Contain findings of fact and conclusions of law and the grounds for the decision based on the material issues of fact or law presented on the record;

(2) Be served on the parties to the proceeding; and

(3) Be issued no later than 25 days after receipt of the petition for review by the Chief Safety Officer.

(h) *Expiration of order.* If the Chief Safety Officer, or the Administrative Law Judge, where appropriate, has not disposed of the petition for review within 30 days of receipt, the emergency order shall cease to be effective unless the Administrator issuing the emergency order determines, in writing, that the imminent hazard providing a basis for the emergency order continues to exist. The requirements of such an extension shall remain in full force and effect pending decision on a petition for review unless stayed or modified by the Administrator.

(i) *Reconsideration.*

(1) A party aggrieved by the Administrative Law Judge's report and recommendation may file a petition for reconsideration with the Chief Safety Officer within one calendar day of service of the report and recommendation. The opposing party may file a response to the petition within one calendar day of service of a petition for reconsideration.

(2) The Chief Safety Officer shall issue a final agency decision within three calendar days of service of the final pleading, but no later than 30 days after receipt of the original petition for review.

(3) The Chief Safety Officer's decision on the merits of a petition for reconsideration constitutes final agency action.

(j) *Appellate review.* A person aggrieved by the final agency action may petition for review of the final decision in the appropriate Court of Appeals for the United States as provided in 49 U.S.C. 5127. The filing of the petition for review does not stay or modify the force and effect of the final agency.

(k) *Time.* In computing any period of time prescribed by this part or by an order issued by the Administrative Law Judge, the day of filing of the petition for review or of any other act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

§ 109.21 Remedies generally.

An Administrator may request the Attorney General to bring an action in the appropriate United States district court seeking temporary or permanent injunctive relief, punitive damages, assessment of civil penalties as provided by 49 U.S.C. 5122(a), and any other appropriate relief to enforce the Federal hazardous material transportation law, regulation, order, special permit, or approval prescribed or issued under the Federal hazardous material transportation law.

Issued in Washington, DC, on February 17, 2011 under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2011–4270 Filed 3–1–11; 8:45 am]

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Part III

Federal Reserve System

12 CFR Part 226

Truth in Lending; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1406]

RIN No. 7100–AD 65

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is publishing for public comment a proposed rule that would amend Regulation Z (Truth in Lending) to implement certain amendments to the Truth in Lending Act made by the Dodd-Frank Wall Street Reform and Consumer Protection Act. Regulation Z currently requires creditors to establish escrow accounts for higher-priced mortgage loans secured by a first lien on a dwelling. The proposal would implement statutory changes made by the Dodd-Frank Act that lengthen the time for which a mandatory escrow account established for a higher-priced mortgage loan must be maintained. In addition, the proposal would implement the Act's disclosure requirements regarding escrow accounts. The proposal also would exempt certain loans from the statute's escrow requirement. The primary exemption would apply to mortgage loans extended by creditors that operate predominantly in rural or underserved areas, originate a limited number of mortgage loans, and do not maintain escrow accounts for any mortgage loans they service.

DATES: Comments must be received on or before May 2, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1406 and RIN No. 7100–AD 65, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.,) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Samantha Pelosi, Attorney, or Paul Mondor, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Truth in Lending Act (TILA) based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.

TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z. An Official Staff Commentary interprets the requirements of Regulation Z. By statute, creditors that follow in good faith Board or official staff interpretations are insulated from civil liability, criminal penalties, and administrative sanction.

On July 30, 2008, the Board published a final rule amending Regulation Z to establish new regulatory protections for consumers in the residential mortgage market. 73 FR 44522; July 30, 2008 (the HOEPA Final Rule). Among other things, the HOEPA Final Rule defined a class of higher-priced mortgage loans that are subject to additional protections. A higher-priced mortgage loan is a transaction secured by a consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction by 1.5 or more percentage points for loans secured by a first lien, or by 3.5 or more percentage points for loans secured by a subordinate lien. The HOEPA Final Rule included a requirement that creditors establish escrow accounts for taxes and insurance on higher-priced mortgage loans secured by a first lien on a principal dwelling. The escrow requirement was effective on April 1, 2010, for loans secured by site-built homes, and on October 1, 2010, for loans secured by manufactured housing.

On August 26, 2009, the Board published a proposed rule to amend Regulation Z. 74 FR 43232; Aug. 26, 2009 (the 2009 Closed-End Proposal). Among other things, the 2009 Closed-End Proposal proposed new staff commentary to address questions that some creditors had raised concerning the determination of the average prime offer rate that is used to determine whether a transaction is a higher-priced mortgage loan covered by the HOEPA Final Rule. No final action has been taken on this proposal.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was signed into law. Among other provisions, Title XIV of the Dodd-Frank Act amends TILA to establish certain requirements for escrow accounts for consumer credit transactions secured by a first lien on a consumer's principal dwelling. The escrow provisions of the Dodd-Frank Act are similar, but not identical, to the provisions adopted by the Board in the HOEPA Final Rule. Sections 1461 and 1462 of the Dodd-Frank Act create new TILA Section 129D, which substantially codifies the Board's escrow requirement for higher-priced mortgage loans but also adds disclosure requirements, lengthens the period for which escrow accounts are required, and adjusts the rate threshold for determining whether escrow accounts are required for "jumbo loans," whose principal amounts exceed the maximum eligible for purchase by Freddie Mac. The new section also authorizes the Board to create an exemption from the escrow requirement for transactions originated by creditors meeting certain prescribed criteria.

On September 24, 2010, the Board published two other proposed rules that would affect the escrow requirement for higher-priced mortgage loans. First, the Board proposed, among other amendments, to replace the APR as the metric a creditor compares to the average prime offer rate to determine whether a transaction is a higher-priced mortgage loan. Creditors instead would use a "transaction coverage rate" that would be closely comparable to the average prime offer rate and would not

be disclosed to consumers. 75 FR 58539; Sept. 24, 2010 (the 2010 Mortgage Proposal). No final action has been taken on this proposal. Second, the Board proposed to implement one of the amendments to the TILA made by the Dodd-Frank Act. That amendment establishes a separate threshold above the average prime offer rate for determining coverage of the escrow requirement for "jumbo" loans, as discussed above. 75 FR 58505; Sept. 24, 2010 (the "Jumbo" Threshold Proposal). Simultaneous with this proposal, the Board is publishing a final rule to adopt the provisions in the "Jumbo" Threshold Proposal (the "Jumbo" Final Rule).

II. Summary of the Proposed Rule

The Board is proposing amendments to Regulation Z's escrow requirement, in accordance with the Dodd-Frank Act. First, the proposed rule would expand the minimum period for mandatory escrow accounts from one to five years, and under certain circumstances longer. Second, the proposed rule would extend the partial exemption for certain loans secured by a condominium unit to planned unit developments and other, similar property types that have governing associations that maintain a master insurance policy. Third, the proposed rule would create an exemption from the escrow requirement for any loan extended by a creditor that makes most of its first-lien higher-priced mortgage loans in counties designated by the Board as "rural or underserved," has annual originations of 100 or fewer first-lien mortgage loans, and does not escrow for any mortgage transaction it services.

The Board also is proposing to establish two new disclosure requirements relating to escrow accounts. One disclosure would be required three business days before consummation of a mortgage transaction for which an escrow account will be established. The Dodd-Frank Act requires such disclosures for higher-priced mortgage loans, for which such an escrow account is required; the Board is proposing to require the same disclosure for all mortgage loans for which an escrow account is established. The disclosure would explain what an escrow account is and how it works. It would state the risk of not having an escrow account. The disclosure would state the estimated amount of the first year's disbursements, the amount to be paid at consummation to fund the escrow account initially, and the amount of the consumer's regular mortgage payments to be paid into the escrow account. Finally, the disclosure would state that the amount of the regular escrow payment may change in the future.

Also, pursuant to the Dodd-Frank Act, the Board is proposing a second disclosure that would be given when a mortgage transaction is entered into without an escrow account or when an escrow account on an existing mortgage loan will be cancelled. The disclosure would be required to be delivered at least three business days before consummation or cancellation of the existing escrow account, as applicable. This disclosure would explain what an escrow account is, how it works, and the risk of not having an escrow account. It also would state the potential consequences of failing to pay home-related costs such as taxes and insurance in the absence of an escrow account. In addition, it would state why there will be no escrow account or why it is being cancelled, as applicable, the amount of any fee imposed for not having an escrow account, and how the consumer can request that an escrow account be established or left in place, along with any deadline for such requests.

III. Consumer Testing for This Proposal

As noted above, the Dodd-Frank Act amended TILA to require new disclosures regarding escrow accounts. Consistent with its practice concerning disclosures required by Regulation Z, the Board conducted consumer testing to develop the disclosures in this proposal. The Board retained ICF Macro, a research and consulting firm that specializes in designing and testing documents, to design and test model disclosure forms for this proposal.

ICF Macro worked closely with the Board to conduct one round of testing (eight interviews) on the Board's proposed disclosures regarding escrow accounts. Interview participants were asked to review model forms and provide their reactions, and they then were asked a series of questions designed to test their understanding of the content. Data were collected on which elements and features of each form were most successful in providing information clearly and effectively. The findings were incorporated in revised model forms, which are included in this proposal.

Key findings of the Board's consumer testing are discussed where relevant in the section-by-section analysis below. ICF Macro prepared a report of the results of the testing, which is available on the Board's public Web site along at: *http://www.federalreserve.gov*.

IV. Section-by-Section Analysis

Section 226.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(6) Business Day

The Board is proposing revisions to § 226.2(a)(6) to define "business day" for purposes of the timing of the new disclosures for escrow account. Currently, § 226.2(a)(6) contains two definitions of business day. Under the general definition, a business day is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. *See* comment 2(a)(6)–1. For some purposes, however, a more precise definition of business day applies: All calendar days except Sundays and specified Federal legal holidays.

TILA Section 129D(h) requires creditors to disclose certain information regarding a mandatory escrow account at least three business days before consummation of the transaction giving rise to such account or in accordance with timeframes established by regulation. The Board is proposing to revise § 226.2(a)(6) and comment 2(a)(6)–2 to apply the more precise definition of business day for this purpose. This proposed application of the more precise definition of business day is being made so that the same definition of business day would be used for the three-business-day waiting period proposed in § 226.19(f)(4) as in the seven-business day waiting period for the early disclosures and three-business-day waiting period for the corrected disclosures in § 226.19(a)(2), which should simplify compliance. This proposal would also apply the more precise definition of business day to the requirement in proposed § 229.20(d)(4) that servicers provide disclosures regarding the cancellation of an escrow account at least three business days before closure of the escrow account.

Section 226.19 Certain Transactions Secured by Real Property or a Dwelling 19(f) Escrow Accounts

Requirements of TILA Section 129D

The Board is proposing a new § 226.19(f) to implement the escrow account disclosure requirements of TILA Section 129D, as enacted by Sections 1461 and 1462 of the Dodd-Frank Act. TILA Section 129D(a) contains the statutory requirement that an escrow account be established in connection with the consummation of any consumer credit transaction secured by a first lien on a consumer's principal dwelling (other than an open-end credit

plan or a reverse mortgage). Section 129D(b), however, limits that requirement to four specified circumstances: (1) Where an escrow account is required by federal or state law; (2) where the loan is made, guaranteed, or insured by a state or federal agency; (3) where the transaction's annual percentage rate exceeds the average prime offer rate by prescribed margins; and (4) where an escrow account is "required pursuant to regulation." TILA Section 129D(h) requires certain disclosures when an escrow account mandated by TILA Section 129D(b) is established. TILA Section 129D(j) requires certain other disclosures when an escrow account for a transaction secured by real property is not established or is cancelled.

The Board's Proposal

For a closed-end transaction secured by a first-lien on real property or a dwelling, proposed § 226.19(f) would require the creditor to disclose the information about escrow accounts specified in § 226.19(f)(2)(i) when an escrow account is established and specified in § 226.19(f)(2)(ii) when an escrow account is not established in connection with the consummation. Proposed § 226.19(f) would require the creditor to disclose this information in accordance with the format requirements of § 226.19(f)(1) and the timing requirements of § 226.19(f)(4). In addition, the proposal would provide that for purposes of § 226.19(f), the term "escrow account" has the same meaning as under Regulation X (24 CFR 3500.17(b)), which implements the Real Estate Settlement Procedures Act (RESPA), and is subject to any interpretations by the Department of Housing and Urban Development (HUD). This proposed definition would parallel existing § 226.35(b)(3)(iv). Proposed comment 19(f)–1 would clarify that the term "real property" includes vacant and unimproved land. It also would clarify that the term "dwelling" includes vacation and second homes and mobile homes, boats, and trailers used as residences and refer to additional guidance regarding the term provided by § 226.2(a)(19) and the related commentary.

Secured by a first-lien transaction. Proposed § 226.19(f) would require disclosures for the establishment or non-establishment of an escrow account in connection with consummation of a transaction secured by a first lien, but not a subordinate lien. TILA Sections 129D(a) and (b) require the establishment of an escrow account in connection with only first-lien mortgage loans. TILA Sections 129D(h) and (j) require disclosures when such an escrow account is established or is not established in connection with consummation. Proposed § 226.19(f) would not require disclosures for subordinate-lien mortgages because TILA does not require the establishment of escrow accounts for subordinate-lien mortgages and the Board understands that creditors rarely offer or establish escrow accounts for such mortgages. Nevertheless, the Board seeks comment on whether this approach is appropriate.

Disclosures for establishment of voluntary escrow accounts. Proposed § 226.19(f) would implement the TILA Section 129D(h) disclosure requirements for the establishment of escrow accounts mandated by TILA Section 129D(b) and also would impose disclosure requirements for the establishment of escrow accounts that are not mandated by TILA. Under the proposal, creditors would have to make the same disclosures for any escrow account that will be established in connection with the consummation of a loan secured by a first lien. The proposed disclosure requirement would inform all consumers obtaining an escrow account, whether mandatory or voluntary, about the function and purpose of escrow accounts generally and the funding of their escrow account specifically.

The proposed § 226.19(f) requirement that disclosures be provided for the establishment of both mandatory and voluntary escrow accounts would parallel the TILA Section 129D(j) requirement that disclosures be provided for the non-establishment or cancellation of any type of escrow account. Conforming the types of escrow accounts that trigger the establishment disclosures to those that trigger the non-establishment and cancellation disclosures avoids the anomalous result of a consumer receiving information about escrow accounts when an escrow account is not established or is cancelled, but not when it is established in the first place.

The Board proposes that the TILA Section 129D(h) disclosures be provided for voluntary as well as mandatory escrow accounts pursuant to its authority under TILA Section 105(a). It authorizes the Board to prescribe regulations that contain classifications, differentiations, or other provisions, and may provide for adjustments and exceptions for any class of transactions, to effectuate the purposes of TILA and Regulation Z, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a). One purpose of the statute is to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available and avoid the uninformed use of credit. 15 U.S.C. 1601(a). The Board believes that providing disclosures to consumers that will have a voluntary escrow account established would enable those consumers to compare the costs of different mortgage loans available to them more easily and to avoid the uninformed use of credit. The information provided would allow consumers to compare the cost and fees of mortgage loans that have and do not have an escrow account, to identify the premium that different creditors may be charging for a mortgage loan with an escrow account, and to understand the total obligation of the mortgage loan that they ultimately may choose.

Real property or a dwelling. With § 226.19(f), the Board covers real property and principal dwellings as well as dwellings that are not used as a principal residence. TILA Section 129D(h) requires certain disclosures when an escrow account mandated by TILA Section 129D(b) is established in connection with the consummation of a closed-end transaction secured by a consumer's principal dwelling. TILA Section 129D(j) requires certain other disclosures when an escrow account for a transaction secured by real property is not established or is cancelled. Proposed § 226.19(f)(2) implements TILA Section 129D(h) regarding disclosures when an escrow account is established in connection with consummation of a transaction secured by a consumer's principal dwelling, but also covers other dwellings and real property without a dwelling. In addition, proposed § 226.19(f)(2) implements TILA Section 129D(j) regarding disclosures when an escrow account is not established in connection with consummation of a transaction secured by real property, but also covers dwellings that would be considered personal property under state law. The Board believes that coverage of the same types of property under the disclosure requirements for the establishment as well as the non-establishment of an escrow account would promote the informed use of credit by consumers and compliance by creditors. The disclosures for the establishment of an escrow account likely would be just as useful to a consumer entering into a transaction secured by a second or vacation home or vacant or unimproved land as it would to a consumer entering into a transaction secured by a principal dwelling. Similarly, the disclosures for the non-establishment of an escrow

account should cover all dwellings, whether or not they are deemed to be real or personal property under state law. Furthermore, the coverage of all dwellings would eliminate the analysis that creditors would have to undertake to determine whether and which disclosures would be triggered when a transaction will be secured by any one of various types of dwellings.

The Board proposes the § 229.19(f) coverage of real property and dwellings pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). TILA Section 105(a) authorizes the Board to prescribe regulations that contain classifications, differentiations, or other provisions, and may provide for adjustments and exceptions for any class of transactions, to effectuate the purposes of TILA and Regulation Z, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a). One purpose of the statute is to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available and avoid the uninformed use of credit. 15 U.S.C. 1601(a). The class of transactions that would be affected is transactions secured by real property or a dwelling. As mentioned above, providing disclosures regarding an escrow account to consumers entering into a transaction secured by real estate or a dwelling would both educate consumers and ease compliance burdens for creditors.

19(f)(1) Format Requirements

Proposed § 226.19(f)(1) contains format requirements for the disclosures required by § 226.19(f)(2). Proposed § 226.19(f)(1)(i) requires that creditors provide the § 226.19(f)(2) disclosures in a minimum 10-point font, grouped together on the front side of a one-page document, separate from all other material, with the headings, content, order, and format substantially similar to Model Form H–24 (when an escrow account is established) or Model Form H–25 (when an escrow account is not established) in Appendix H. Consumer testing has shown that the location and order in which information was presented affected consumers' ability to locate and comprehend the information disclosed. Proposed comment 19(f)(1)(i)–1 clarifies that the disclosures required by § 226.19(f)(2) and any optional information permitted by § 226.19(f)(3) must be grouped together on the front side of a separate one-page document that contains no other material. The proposed comment also clarifies that the § 226.19(f)(2)(i) disclosures may not appear in the same document as the escrow disclosures required under § 226.18 or under RESPA or Regulation X. Proposed comment 19(f)(1)(i)–2 clarifies that the notice containing the disclosures required by § 226.19(f)(2) and any optional information permitted by § 226.19(f)(3) must be in writing in a form that the consumer may keep.

Proposed § 226.19(f)(1)(ii) would require that the heading "Information About Your Mortgage Escrow Account" required by § 226.19(f)(2)(i) or the heading "Required Direct Payment of Property Taxes and Insurance" required by § 226.19 (f)(2)(ii) be more conspicuous than and precede the other disclosures. The heading would be required to be outside the table that is required by proposed § 226.19(f)(1)(iii).

Proposed § 226.19(f)(1)(iii) would require the creditor to provide the disclosures regarding the establishment of an escrow account under § 226.19(f)(2)(i) in the form of a table containing four rows or the non-establishment of an escrow account under § 226.19(f)(2)(ii) in the form of a table containing no more than seven rows. The disclosures regarding the non-establishment of an escrow account under § 226.19(f)(2)(ii) would be in the form of a table containing five rows when the creditor does not offer the option of having an escrow account. In such a case, the creditor would be required by to omit the §§ 226.19(f)(2)(ii)(D) and (G) disclosures from the table because they would be inapplicable. Only the information required or permitted by § 226.19(f)(2)(i) or (ii) would be allowed to appear in the table. Proposed § 226.19(f)(1)(iv) would require the creditor to present the disclosures in the format of a question and answer in a manner substantially similar to Model Form H–24 or H–25 in Appendix H. Consumer testing has shown that using a tabular, question and answer format improved participants' ability to identify and understand key information. Proposed § 226.19(f)(1)(iv) also would require the creditor to present the disclosures appearing in the table in the order listed in § 226.19(f)(2)(i)(A)–(D) or (ii)(A)–(G), as applicable. This order would ensure that consumers receive the disclosed information in a logical progression.

Proposed § 226.19(f)(1)(v) would require the creditor to highlight certain disclosures because consumer testing has shown that such emphasis allows consumers to locate and identify important information more quickly. The Board proposes that all dollar amounts be presented in bold font. It also proposes implementation of the requirement in TILA Section 129D(j)(2)(B) that the notice regarding the non-establishment of an escrow account contain a "prominent" statement of the consumer's responsibility for covering home-related costs through potentially large semi-annual or annual payments by requiring presentation of that information in bold format.

19(f)(2) Content Requirements

19(f)(2)(i) Establishment of Escrow Account

Proposed § 226.19(f)(2)(i) would implement TILA Section 129D(h) by setting forth the required content for the disclosure notice regarding the establishment of an escrow account before the end of the 45-day period following consummation of a transaction subject to § 226.19(f). The proposed 45-day period reflects the requirement in § 3500.17(g)(1) of Regulation X, which implements RESPA, that the servicer submit an initial escrow account statement to the borrow at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan. The Board solicits comment on whether the 45-day period is appropriate for deeming an account to be established in connection with consummation of a mortgage transaction. Proposed comment 19(f)(2)(i)–2 would clarify that neither creditors nor servicers are required to provide the § 226.19(f)(2)(i) disclosures when an escrow account is established solely in connection with the consumer's delinquency or default on the underlying debt obligation.

Proposed § 226.19(f)(2)(i) also would require the disclosures to be made clearly and conspicuously. Proposed comment 19(f)(2)(i)–1 would clarify that, to meet the clear and conspicuous standard, disclosures must be made in a reasonably understandable form and readily noticeable to the consumer. Proposed § 226.19(f)(2)(i) also would require the disclosure notice to bear the heading "Information About Your Mortgage Escrow Account."

19(f)(2)(i)(A) Purpose of Notice

Proposed § 226.19(f)(2)(i)(A) would require a statement that the purpose of the notice is to inform the consumer that the consumer's mortgage with the creditor will have an escrow account. This proposed provision would implement the requirement of TILA Section 129D(h)(1) that the creditor disclose the fact that an escrow account will be established.

19(f)(2)(i)(B) Explanation of Escrow Account

Proposed § 226.19(f)(2)(i)(B) would require the creditor to provide a statement that an escrow account is an account used to pay home-related costs such as property taxes and insurance together with a statement that an escrow account is sometimes called an "impound" or "trust" account. This information would be followed by a statement that the consumer will pay into the escrow account over time and that the creditor will take money from the account to pay costs as needed. The Board is proposing these statements explaining an escrow account, the other names sometimes used for an escrow account, and how an escrow account works pursuant to its authority under TILA Section 129D(h)(6) to prescribe regulations requiring the creditor to disclose such other information as the Board determines necessary for the protection of the consumer. The Board believes that informing consumers of the other names for an escrow account would prevent consumers in Western regions of the country from confusing an escrow account for the payment of home-related costs such as property taxes and insurance premiums with the escrow that is commonly used for the closing and settlement of a credit transaction. The Board also believes that the basic information explaining what an escrow account is and how it works provides needed context for the other disclosures in the notice.

Proposed § 226.19(f)(2)(i)(B) also would require a statement of the estimated dollar amount that the consumer's home-related costs will total for the first year of the mortgage. TILA Section 129D(h)(3) requires creditors establishing an escrow account in connection with a transaction to disclose the amount, in the initial year after consummation, of the estimated taxes and hazard insurance. The statement regarding the total dollar amount of the estimated home-related costs would implement the TILA Section 129D(h)(3) requirement. Proposed comment 19(f)(2)(i)–1 states that the creditor may comply with the numerical content requirement of § 226.19(f)(2)(i)(B) by using the amount derived from the escrow account analysis conducted pursuant to Regulation X.

19(f)(2)(i)(C) Risk of Not Having Escrow Account

Proposed § 226.19(f)(2)(i)(C) would require a statement that, if the consumer did not have an escrow account, the consumer would be responsible for directly paying home-related costs through potentially large semi-annual or annual payments. This is consistent with the requirements of TILA Section 129D(h)(5). The Board is proposing the statement regarding the consumer's direct responsibility, in the absence of an escrow account, for paying home-related costs through potentially large payments to implement TILA Section 129D(h)(5) and to conform the disclosure with the similar disclosure required by TILA Section 129D(j)(2)(B) regarding the non-establishment of an escrow account.

19(f)(2)(i)(D) Funding of Escrow Account

Proposed § 226.19(f)(2)(i)(D) would implement TILA Section 129D(h)(2) by requiring a statement of the dollar amount that the consumer will be required to deposit at closing to initially fund the escrow account. Proposed § 226.19(f)(2)(i)(D) also would implement TILA Section 129D(h)(4) by requiring a statement of the dollar amount that the consumer's periodic mortgage payments will include for deposit into the escrow account. In addition, proposed § 226.19(f)(2)(i)(D) would require a third statement that the amount of this escrow payment may change in the future. The Board is proposing to require this last statement pursuant to its authority under TILA Section 129D(h)(6) to prescribe regulations requiring the creditor to disclose such other information as the Board determines necessary for the protection of the consumer. This information notifies a consumer that his or her periodic mortgage payment could change with an increase or decrease in property tax or hazard insurance costs. Proposed comment 19(f)(2)(i)–1 states that the creditor may comply with the numerical content requirement of § 226.19(f)(2)(i)(D) by using the amount derived from the escrow account analysis conducted pursuant to Regulation X.

19(f)(2)(ii) Non-Establishment of Escrow Account

Proposed § 226.19(f)(2)(ii) would implement TILA Section 129D(j)(2) by setting forth the required content for the disclosure notice regarding escrow accounts when an escrow account will not be established before the end of the 45-day period following consummation of a transaction subject to § 226.19(f).

Proposed § 226.19(f)(2)(ii) would require that the disclosures be made clearly and conspicuously. Proposed comment 19(f)(2)(ii)–1 refers to comment 19(f)(2)(i)–1, which clarifies that, to meet the clear and conspicuous standard, disclosures must be made in a reasonably understandable form and readily noticeable to the consumer. Proposed § 226.19(f)(2)(ii) also would require the disclosure notice to bear the heading "Required Direct Payment of Property Taxes and Insurance."

19(f)(2)(ii)(A) Purpose of Notice

Proposed § 226.19(f)(2)(ii)(A) would require a statement that the purpose of the notice is to inform the consumer that the consumer's mortgage with the creditor will not have an escrow account and to explain the risk of not having an escrow account. The Board is proposing these disclosures pursuant to the Board's authority under TILA Section 129D(j)(2)(D) to include in the notice such other information as the Board determines necessary for the protection of the consumer. The Board believes that these disclosures are necessary to draw the consumer's attention to the fact that his or her mortgage will not have an escrow account and the implications of such absence.

19(f)(2)(ii)(B) Explanation of Escrow Account

Proposed § 226.19(f)(2)(ii)(B) would require the creditor to provide a statement that an escrow account is an account that is used to pay home-related costs such as property taxes and insurance together with a statement that an escrow account is sometimes called an "impound" or "trust" account. This information would be followed by a statement that the borrower pays into the escrow account over time and that the creditor takes money from the account to pay costs as needed. The Board is proposing these statements explaining an escrow account, the other names sometimes used for an escrow account, and how an escrow account works pursuant to its authority under TILA Section 129D(h)(6) to prescribe regulations requiring the creditor to disclose such other information as the Board determines necessary for the protection of the consumer. The Board believes that informing consumers of the other names for an escrow account would prevent consumers in Western regions of the country from confusing an escrow account for the payment of home-related costs such as property taxes and insurance premiums with the escrow that is commonly used for the closing and settlement of a credit transaction. The Board also believes that the basic information explaining what an escrow account is and how it works provides needed context for the other disclosures in the notice.

19(f)(2)(ii)(C) Reason Why Mortgage Will Not Have an Escrow Account

Proposed § 226.19(f)(2)(ii)(C) would require a statement that the consumer was given the option of having an escrow account but that the consumer waived it or a statement that the creditor does not offer the option of having an escrow account, as applicable. The Board is proposing this disclosure pursuant to the Board's authority under TILA Section 129D(j)(2)(D) to include in the notice such other information as the Board determines necessary for the protection of the consumer. This disclosure would provide the consumer with the background information necessary to understand the disclosure required by § 226.19(f)(2)(ii)(G) at the end of the notice as to whether the consumer has an option to request the establishment of an escrow account.

19(f)(2)(ii)(D) Fee for Choosing Not To Have Escrow Account

Proposed § 226.19(f)(2)(ii)(D) would implement TILA Section 129D(j)(2)(A) by requiring disclosure of any fee charged for not establishing an escrow account. Proposed § 226.19(f)(2)(ii)(D) would require, if the consumer waives establishment of an escrow account, a statement of the dollar amount of any fee that the consumer will be charged for choosing not to have an escrow account, or a statement that the consumer will not be charged a fee. If the creditor is not establishing an escrow account because it does not offer escrow accounts to consumers, proposed § 226.19(f)(2)(ii)(D) would require the creditor to omit this disclosure from the table.

The Board understands that creditors only charge a fee for the non-establishment of an escrow account when the creditor usually offers and establishes escrow accounts for all first-lien transactions, but a particular consumer requests that an escrow account not be established for his or her transaction. A creditor that offers and establishes escrow accounts for all first-lien transactions typically benefits from this practice because the funds in the escrow accounts provide interest income to the creditor and additional capital reserves. The Board believes that a creditor that is asked by a consumer not to engage in its usual practice of establishing an escrow account for his or her particular transaction may charge that consumer a fee for foregoing such financial benefits with respect the transaction. Creditors that do not regularly offer or establish escrow accounts do not charge consumers for the non-establishment of an escrow account, because those creditors are not foregoing a financial benefit. The proposal would require creditors that do not offer escrow accounts to omit the disclosure regarding a fee because the Board understands that those creditors do not charge these fees and that the disclosure, therefore, would be inapplicable. Nevertheless, the Board seeks comment on this approach.

19(f)(2)(ii)(E) Risk of Not Having Escrow Account

Proposed § 226.19(f)(2)(ii)(E) would require a statement that the consumer will be responsible for directly paying home-related costs through potentially large semi-annual or annual payments. TILA Section 129D(j)(2)(B) requires a clear and prominent statement that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of an escrow account, and that the costs for taxes and insurance can be substantial. Proposed § 226.19(f)(2)(ii)(E) would implement these TILA Section 129D(j)(2)(B) requirements.

19(f)(2)(ii)(F) Consequences of Failure To Pay Home-Related Costs

Proposed § 226.19(f)(2)(ii)(F) would require a statement that, if the consumer does not pay the applicable home-related costs, the creditor could require an escrow account on the mortgage or add the costs to the loan balance. This information would be followed by a statement that the creditor could also require the consumer to pay for insurance that the creditor buys on the consumer's behalf and a statement that this insurance would likely be more expensive and provide fewer benefits than traditional homeowner's insurance. TILA Section 129D(j)(2)(C) requires an explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance and the potentially higher cost or reduced coverage for the consumer for such insurance. Proposed § 226.19(f)(2)(ii)(F) would implement TILA Section 129D(j)(2)(C) by providing examples of the possible consequences of a failure to pay home-related costs, such as a decision by the creditor to require an escrow account, to add the home-related costs to the loan balance, or to purchase "forced-placed" insurance. Proposed § 226.19(f)(2)(ii)(F) would require a description of "forced-placed" insurance, rather than use of that term, because consumer testing showed that consumers were unfamiliar with the term and that the term itself distracted consumers from recognizing the other possible consequences of a failure to pay home-related costs.

19(f)(2)(ii)(G) Option To Establish Escrow Account

Proposed § 226.19(f)(2)(ii)(G) would require disclosure of the telephone number that the consumer can use to request an escrow account and the latest date by which the consumer can make the request. The Board is proposing this disclosure pursuant to its authority under TILA Section 129D(j)(2)(D) to include in the notice such other information as it determines necessary for the protection of the consumer. The Board believes that, after considering the risks of not having an escrow account as disclosed in the notice, a consumer who originally waived the establishment of an escrow account may wish to set one up. The information to contact the creditor with a request to establish an escrow account should be readily available to such consumers in the notice. The proposed rule would not require a creditor to obtain a toll-free telephone number that consumers may use to request the establishment of an escrow account. The Board proposes that a creditor disclose the telephone number that it has obtained for consumers to contact it regarding a variety of issues and that also may be used to request establishment of an escrow account. If the creditor does not offer the option of having an escrow account, proposed § 226.19(f)(2)(ii)(G) would require the creditor to omit this disclosure from the table.

The proposal does not require a creditor to disclose whether a fee will be charged when a consumer changes his or her decision and asks for an escrow account to be established. The Board understands that a creditor that usually offers and establishes escrow accounts for all first-lien transactions would not charge a consumer for changing his or her decision. The Board seeks comment on this approach.

19(f)(3) Optional Information

Proposed § 226.19(f)(3) would permit the creditor, at its option, include the creditor's name or logo, or the consumer's name, property address, or loan number on the disclosure notice, outside of the table. Proposed comment 19(f)(3)–1 clarifies that § 226.19(f)(3) lists the information that the creditor may, at its option, include on the disclosure notice, outside of the table described in § 226.19(f)(1)(iii) that contains the required content of § 226.19(f)(2).

19(f)(4) Waiting Period for Disclosures

Proposed § 226.19(f)(4) would require the creditor to provide the disclosures regarding the establishment or the non-establishment of an escrow account, as applicable, so that the consumer receives them no later than three business days prior to consummation. This proposed provision would implement the requirement of TILA Section 129D(h) for disclosures regarding the establishment of an escrow account three business days before consummation and the requirement of TILA Section 129D(j)(1)(A) for disclosures regarding the non-establishment of an escrow account in a "timely" manner. Proposed § 226.19(f)(4) would conform the timing requirement of TILA Section 129D(j)(1)(A) to that of TILA Section 129D(h) so that a consumer that will not have an escrow account would have sufficient time to consider the attendant responsibilities and risks before consummating the transaction.

Proposed comment 19(f)(4)–1 would clarify that, for purposes of § 226.19(f)(4), "business day" means all calendar days except for Sundays and specified legal public holidays. The Board believes that the definition of business day that excludes Sundays and public holidays is more appropriate than the more general definition because consumers should not be presumed to have received disclosures in the mail on a day on which there is no mail delivery. Proposed comment 19(f)(4)–2 would provide guidance regarding the timing requirement with an example that states if consummation is to occur on Thursday, June 11, the consumer must receive the disclosures on or before Monday, June 8, assuming there are no legal public holidays.

19(f)(5) Timing of Receipt

Proposed § 226.19(f)(5) states that, if the disclosures are mailed to the consumer or delivered by a means other than in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered. Proposed comment 19(f)(5)–1 states that, if the creditor provides the disclosures to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the disclosures by mail, receipt is presumed three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 226.19(f)(4) begins. The proposed comment also permits creditors that use electronic mail or courier to follow this approach. Whatever method is used to provide disclosures, creditors may rely on documentation of receipt in determining when the waiting period begins.

19(f)(6) Consumer's Waiver of Waiting Period Before Consummation

Proposed § 226.19(f)(6) would permit consumers to modify or waive the three-business-day waiting period following receipt of the escrow account disclosures required by § 226.19(f)(2) for *bona fide* personal financial emergencies. Proposed § 226.19(f)(6) would require the consumer waiving the waiting period to give the creditor a dated, written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers primarily liable on the legal obligation. Proposed § 226.19(f)(6) would prohibit the use of printed forms to effectuate a waiver.

Proposed comment 19(f)(6)–1 would provide additional guidance regarding the waiver procedure. For example, the proposed comment would clarify that a consumer may modify or waive the waiting period only after receiving the required disclosures. It also would clarify that a waiver is effective only if each consumer primarily liable on the legal obligation signs a waiver statement. Where there are multiple consumers, they may sign the same waiver statement. Proposed comment 19(f)(6)–1 would allow the consumer to include the waiver statement that specifically waives or modifies the three-business-day waiting period required by § 226.19(f)(4) in the same document that contains a waiver statement that specifically waives or modifies the seven-business-day waiting period for early disclosures or the three-business-day waiting period for corrected disclosures required by § 226.19(a)(2).

Proposed comment 19(f)(5)–2 would clarify that, to qualify as a *bona fide* personal financial emergency, the situation must require disbursement of loan proceeds before the end of the waiting period. Proposed comment 19(f)(5)–2 would further clarify that a *bona fide* personal financial emergency typically, but not always, will involve imminent loss of or harm to a dwelling or harm to the health and safety of a natural person. It also would provide that a waiver is not effective if the consumer's statement is inconsistent with facts known to the creditor.

The Board proposes this waiver provision pursuant to the Board's authority under TILA Section 105(f). 15 U.S.C. 1604(f). TILA Section 105(f) generally authorizes the Board to exempt all or any class of transactions from coverage under TILA and Regulation Z if the Board determines that coverage under that part does not provide a meaningful benefit to consumers in the form of useful information or protection. 15 U.S.C. 1604(f)(1). The Board is proposing to exempt closed-end transactions secured by a first lien on real property or a dwelling from the three-business-day waiting period required by TILA Section 129D(h) and § 226.19(f)(4) when the consumer determines that the loan proceeds are needed before the waiting period ends to meet a *bona fide* personal financial emergency. TILA Section 105(f) directs the Board to make the determination of whether coverage of such transactions under TILA Section 129D(h) and § 226.19(f)(4) provides a meaningful benefit to consumers in light of specific factors. 15 U.S.C. 1604(f)(2). These factors are (1) the amount of the loan and whether the provision provides a benefit to consumers who are parties to such transactions; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process for the class of transactions; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA and Regulation Z; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

The Board has considered each of these factors carefully and, based on that review, believes that the proposed exemption is appropriate. Generally, a first-lien mortgage is the largest loan that a consumer will obtain. The waiting period would harm consumers experiencing a *bona fide* personal financial emergency because those consumers would need access to the proceeds of their loans during that period. The waiting period would hinder the credit process for consumers experiencing a *bona fide* personal financial emergency by forcing them to wait three business days before consummating the loan. For consumers experiencing a *bona fide* personal financial emergency, the proceeds of the mortgage loan will be extremely important in meeting other financial obligations. Most first-lien mortgage loans are secured by the consumer's principal dwelling. The exemption

would not undermine the goal of consumer protection because the disclosure required by § 226.19(f)(2) must be provided to the consumer before the consumer may modify or waive the waiting period. Delivery of the disclosure itself promotes the informed use of credit. In addition, § 226.19(f)(5) would require a consumer wishing to modify or waive the waiting period to provide the creditor with a dated, written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the consumer's signature. The use of a printed form as the written statement would be prohibited.

The Board's exemption authority under Section 105(f) does not apply in the case of a mortgage referred to in Section 103(aa), which are high-cost mortgages generally referred to as "HOEPA loans." The Board does not believe that this limitation restricts its ability to apply the proposed waiver provision to all closed-end transactions secured by a first lien on real property or a dwelling when the consumer is experiencing a *bona fide* personal financial emergency, including HOEPA loans. This limitation on the Board's general exemption authority is a necessary corollary to the decision of the Congress, as reflected in TILA Section 129(*l*)(1), to grant the Board more limited authority to exempt HOEPA loans from the prohibitions applicable only to HOEPA loans in Section 129(c) through (i) of TILA. *See* 15 U.S.C. 1639(*l*)(1). In this case, the Board is not proposing any exemptions from the HOEPA prohibitions. This limitation does raise a question as to whether the Board could use its exemption authority under Section 105(f) to exempt HOEPA loans, but not other types of mortgage loans, from other, generally applicable TILA provisions. That question, however, is not implicated by this proposal.

The Board proposes to apply its general exemption authority for all first lien loans secured by real property or a dwelling where a consumer is experiencing a *bona fide* personal financial emergency, including both HOEPA and non-HOEPA loans, to permit the modification or waiver of the pre-consummation waiting period because the waiting period does not benefit consumers in such circumstances. It would not be consistent with the statute or with Congressional intent to interpret the Board's authority under Sections 105(f) in such a way that the proposed waiver provision could apply only to mortgage loans that are not subject to HOEPA. Reading the statute in a way that would require HOEPA borrowers who are experiencing a *bona fide* personal financial emergency to wait three business days before consummating the transaction that will provide the needed proceeds is not a reasonable construction of the statute.

The Board solicits comment on all aspects of this proposal, including the cost, burden, and benefits to consumers and to industry regarding the proposed disclosures regarding escrow accounts. The Board also requests comment on any alternatives to the proposal that would further the purposes of TILA and provide consumers with more useful disclosures.

Section 226.20 Subsequent Disclosure Requirements

20(d) Cancellation of Escrow Account

Requirements of TILA Section 129D(j)

The Board is proposing a new § 226.20(d) to implement the disclosure requirements of TILA Sections 129D(j)(1)(B) and 129D(j)(2), as enacted by Section 1462 of the Dodd-Frank Act. TILA Section 129D(j)(1)(B) requires a creditor or servicer to provide the disclosures set forth in TILA Section 129D(j)(2) when a consumer requests closure of an escrow account that was established in connection with a transaction secured by real property.

The Board's Proposal

For a closed-end transaction secured by a first lien on real property or a dwelling for which an escrow account was established and will be cancelled, proposed § 226.20(d) would require the creditor or servicer to disclose the information about escrow accounts specified in § 226.20(d)(2). Proposed § 226.20(d) would require the creditor to disclose this information in accordance with the format requirements of § 226.20(d)(1) and the timing requirements of § 226.20(d)(4). In addition, the proposal would provide that for purposes of § 226.20(d), the term "escrow account" and the term "servicer" have the same respective meanings as under §§ 3500.17(b) and 3500.2(b) of Regulation X, which implements RESPA, and is subject to any interpretations by HUD. These proposed definitions would parallel existing § 226.35(b)(3)(iv) and § 226.36(c)(3), respectively. Proposed comment 20(d)–1 would clarify that the term "real property" includes vacant and unimproved land. It also would clarify that the term "dwelling" includes vacation and second homes and mobile homes, boats, and trailers used as residences and refer to additional guidance regarding the term provided by § 226.2(a)(19) and the related commentary.

Secured by a first-lien transaction. Proposed § 226.20(d) would require disclosures for the cancellation of an escrow account that was established in connection with consummation of a transaction secured by a first lien, but not a subordinate lien. TILA Sections 129D(a) and (b) require the establishment of an escrow account in connection with only first-lien mortgage loans. TILA Section 129D(j) requires disclosures when such an escrow account is established and later cancelled. Proposed § 226.20(d) would not require disclosures for cancellation of an escrow account that was established in connection with a subordinate-lien mortgages because TILA does not require the establishment of escrow accounts for such mortgages. In addition, the Board understands that, in practice, creditors rarely offer or establish escrow accounts for such mortgages and therefore, the cancellation disclosures seldom would be triggered. Nevertheless, the Board seeks comment on whether this approach is appropriate.

Real property or a dwelling. With § 226.20(d), the Board covers real property and dwellings. Proposed § 226.20(d) implements TILA Section 129D(j), which requires disclosures when an escrow account that was established in connection with a transaction secured by real property will be cancelled. But, the proposal also covers cancellation of an escrow account that was established in connection with a transaction secured by a dwelling that is considered to be personal property under state law. The coverage of the proposal would parallel the coverage of proposed § 226.19(f), which would require disclosures for the establishment or non-establishment of an escrow account. Board believes this coverage would promote informed use of credit by consumers and compliance by creditors. The information disclosed when an escrow account will be cancelled likely would be just as useful to a consumer who has a loan secured by a mobile home as it would to a consumer who has a mortgage loan secured by a single-family home. Similarly, the disclosures should cover all dwellings, whether or not they are deemed personal rather than real property under state law. Furthermore, the coverage of all dwellings would eliminate the analysis that creditors would have to undertake to determine whether the cancellation of the escrow account established for a loan secured by a particular type of dwelling would trigger the disclosures.

The Board proposes the § 229.19(f) coverage of real property and dwellings pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a). TILA Section 105(a) authorizes the Board to prescribe regulations that contain classifications, differentiations, or other provisions, and may provide for adjustments and exceptions for any class of transactions, to effectuate the purposes of TILA and Regulation Z, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a). One purpose of the statute is to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available and avoid the uninformed use of credit. 15 U.S.C. 1601(a). The class of transactions that would be affected is transactions secured by real property or a dwelling. For the reasons set forth in the above discussion regarding proposed § 226.19(f), the Board believes that coverage of transactions secured by a dwelling as well as real property would provide promote the informed use of credit by consumers.

Creditor's or servicer's independent decision to cancel escrow account. TILA Section 129D(j)(1)(B) requires a creditor or servicer to provide the TILA Section 129D(j)(2) cancellation disclosures when the consumer chooses and provides written notice the choice to close his or her escrow account in accordance with any statute, regulation, or contractual agreement. Proposed § 226.20(d) would implement TILA Section 129D(j)(1)(B), but also would require provision of the cancellation disclosures when the creditor or servicer decides independently to cancel an escrow account. The Board believes that a consumer whose escrow account will be closed should be informed of the risks attendant with not having an escrow account, even if the consumer is not requesting the cancellation of the account.

The Board proposes this requirement pursuant to its authority under TILA Section 105(a). 15 U.S.C. 1604(a) and (f). TILA Section 105(a) authorizes the Board to prescribe regulations that contain classifications, differentiations, or other provisions, and may provide for adjustments and exceptions for any class of transactions, to effectuate the purposes of TILA and Regulation Z, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a). One purpose of the statute is to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available and avoid the uninformed use of credit. 15 U.S.C. 1601(a). The Board believes provision of the cancellation disclosures when creditors and servicers independently make decisions to close escrow accounts will help consumers to avoid the uninformed use of credit. The cancellation disclosures would consumers of their responsibility to personally and directly pay property taxes and insurance premiums and of the consequences for failure to do so. Indirectly, the disclosure would inform consumers that they would need to budget or save to meet these potentially large obligations when due, but that the total amount of their regular periodic mortgage payments would decrease.

20(d)(1) Format Requirements

Proposed § 226.20(d)(1) contains format requirements for the disclosures required by § 226.20(d)(2). Proposed § 226.20(d)(1)(i) would require that the creditor or servicer provide the § 226.20(d)(2) disclosures in a minimum 10-point font, grouped together on the front side of a one-page document, separate from all other material, with the headings, content, order, and format substantially similar to Model Form H–26 in Appendix H. Consumer testing has shown that the location and order in which information was presented affected consumers' ability to locate and comprehend the information disclosed. Proposed comment 20(d)(1)(i)–1 clarifies that the disclosures required by § 226.20(d)(2) and any optional information permitted by § 226.20(d)(3) must be grouped together on the front side of a separate one-page document that contains no other material. Proposed comment 20(d)(1)(i)–2 clarifies that the notice containing the disclosures required by § 226.20(d)(2) and any optional information permitted by § 226.20(d)(3) must be in writing in a form that the consumer may keep.

Proposed § 226.20(d)(1)(ii) would require that the heading "Required Direct Payment of Property Taxes and Insurance" required by § 226.20(d)(2) be more conspicuous than and precede the other disclosures. The heading would be required to be outside of the table that is required by proposed § 226.20(d)(1)(iii).

Proposed § 226.20(d)(1)(iii) would require the creditor or servicer to provide the disclosures regarding the cancellation of an escrow account under § 226.20(d)(2) in the form of a table containing no more than seven rows. The disclosures would be in the form of a table containing six rows when the creditor or servicer makes a unilateral decision to close an escrow account and does not impose a fee for closure. In such a case, the creditor or servicer would be required to omit the § 226.20(d)(2)(iv) disclosure from the table because it would be unnecessary. Only the information required or permitted by § 226.20(d)(2) would be permitted in the table. Proposed § 226.20(d)(1)(iv) would require the creditor or servicer to present the disclosures in the format of a question and answer in a manner substantially similar to Model Form H–26 in Appendix H. Consumer testing has shown that using a tabular, question and answer format improved participants' ability to identify and understand key information. Proposed § 226.20(d)(1)(iv) also would require the creditor or servicer to present the disclosures appearing in the table in the order listed in § 226.20(d)(2)(i)–(vii). This order would ensure that consumers receive the disclosed information in a logical progression.

Proposed § 226.20(d)(1)(v) would require the creditor or servicer to highlight certain disclosures because consumer testing has shown that such emphasis allows consumers to locate and identify important information more quickly. The Board proposes that the dollar amount in the disclosure required by § 226.20(d)(2)(iv) be presented in bold font. It also proposes implementation of the requirement in TILA Section 129D(j)(2)(B) that the notice regarding the cancellation of an escrow account contain a "prominent" statement of the consumer's responsibility for covering home-related costs through potentially large semi-annual or annual payments by requiring presentation of that information in bold format.

20(d)(2) Content Requirements

Proposed § 226.20(d)(2) would implement TILA Section 129D(j)(2) by setting forth the required content for the disclosure notice regarding the cancellation of an escrow account that was established in connection with consummation of a transaction subject to § 226.20(d). Proposed comment 20(d)(2)–2 would clarify that neither creditors nor servicers are required to provide the § 226.20(d)(2) disclosures if an escrow account established solely in connection with the consumer's delinquency or default on the underlying debt obligation will be cancelled. Proposed comment 20(d)(2)–3 would clarify that neither creditors nor servicers are required to provide the disclosures when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, or foreclosure.

Proposed § 226.20(d)(2) also would require that the disclosures be made clearly and conspicuously. Proposed comment 20(d)(2)–1 would clarify that, to meet the clear and conspicuous standard, disclosures must be made in a reasonably understandable form and readily noticeable to the consumer. Proposed § 226.20(d)(2) also would require the disclosure notice to bear the heading "Required Direct Payment of Property Taxes and Insurance."

20(d)(2)(i) Purpose of Notice

Proposed § 226.20(d)(2)(i) would require a statement that the purpose of the notice is to inform the consumer that the escrow account on the consumer's mortgage with the creditor or servicer is being closed and to explain the risk of not having an escrow account. The Board is proposing these disclosures pursuant to its authority under TILA Section 129D(j)(2)(D) to include in the notice such other information as it determines necessary for the protection of the consumer. The Board believes that these disclosures are necessary to draw the consumer's attention to the fact that the absence of an escrow account will carry some risk.

20(d)(2)(ii) Explanation of Escrow Account

Proposed § 226.20(d)(2)(ii) would require the creditor or servicer to provide a statement that an escrow account is an account that is used to pay home-related costs such as property taxes and insurance together with a statement that an escrow account is sometimes called an "impound" or "trust" account. This information would be followed by a statement that the consumer pays into the escrow account over time and that the creditor or servicer takes money from the account to pay costs as needed. The Board is proposing these statements explaining an escrow account, the other names sometimes used for an escrow account, and how an escrow account works pursuant to its authority under TILA Section 129D(j)(2)(D) to include in the notice such other information as the Board determines necessary for the protection of the consumer. The Board believes that informing consumers of the other names for an escrow account would prevent consumers in Western regions of the country from confusing an escrow account for the payment of home-related costs such as property taxes and insurance premiums with the escrow that is commonly used for the closing and settlement of a credit transaction. The Board also believes that the basic information explaining what an escrow account is and how it works provides needed context for the other disclosures in the notice.

20(d)(2)(iii) Reason Why Mortgage Will Not Have an Escrow Account

Proposed § 226.20(d)(2)(iii) would require a statement that the consumer had an escrow account but, as applicable, the consumer asked the creditor or servicer to close it or the creditor or servicer independently decided to cancel it. The Board is proposing this disclosure pursuant to the Board's authority under TILA Section 129D(j)(2)(D) to include in the notice such other information as the Board determines necessary for the protection of the consumer. This disclosure would provide the consumer with the background information necessary to understand the disclosure required by § 226.20(d)(2)(vii) at the end of the notice as to whether the consumer has an option to keep the escrow account.

20(d)(2)(iv) Fee for Closing Escrow Account

Proposed § 226.20(d)(2)(iv) would implement TILA Section 129D(j)(2)(A) by requiring disclosure of any fee charged for closing an escrow account. Proposed § 226.20(d)(2)(iv) would require, if the consumer has asked the creditor or servicer to close the escrow account, a statement of the dollar amount of any fee that the consumer will be charged in connection with the closure or a statement that the consumer will not be charged a fee. If the creditor or servicer independently decided to cancel the escrow account, rather than agreeing to close it pursuant to the request of the consumer, and does not charge a fee in connection with the cancellation, proposed § 226.20(d)(2)(iv) would require the creditor or servicer to omit this disclosure from the table.

20(d)(2)(v) Risk of Not Having Escrow Account

Proposed § 226.20(d)(2)(v) would require a statement that the consumer will be responsible for directly paying home-related costs through potentially large semi-annual or annual payments. TILA Section 129D(j)(2)(B) requires a clear and prominent statement that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of an escrow account, and that the costs for taxes and insurance can be substantial. Proposed § 226.20(d)(2)(v) would implement these TILA Section 129D(j)(2)(B) requirements.

20(d)(2)(vi) Consequences of Failure To Pay Home-Related Costs

Proposed § 226.20(d)(2)(vi) would require a statement that, if the consumer does not pay the applicable home-related costs, the creditor or servicer could require an escrow account on the mortgage or add the costs to the loan balance. This information would be followed by a statement that the creditor or servicer could also require the consumer to pay for insurance that the creditor or servicer buys on the consumer's behalf and a statement that this insurance would likely be more expensive and provide fewer benefits than traditional homeowner's insurance. TILA Section 129D(j)(2)(C) requires provision of a clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance and the potentially higher cost or reduced coverage for the consumer for such insurance. Proposed § 226.20(d)(2)(vi) would implement TILA Section 129D(j)(2)(C) by providing examples of the possible consequences of a failure to pay home-related costs, such as a decision by the creditor to require an escrow account, to add the home-related costs to the loan balance, or to purchase "forced-placed" insurance. Proposed § 226.20(d)(2)(vi) would require a description of "forced-placed" insurance, rather than use of that term, because consumer testing showed that consumers were unfamiliar with the term and that the term itself distracted consumers from recognizing the other possible consequences of a failure to pay home-related costs.

20(d)(2)(vii) Option To Keep Escrow Account

Proposed § 226.20(d)(2)(vii) would require, as applicable, a statement of the telephone number that the consumer can use to request that the escrow account be kept open and the latest date by which the consumer can make the request, or a statement that the creditor or servicer does not offer the option of keeping the escrow account. The Board is proposing this disclosure pursuant to its authority under TILA Section 129D(j)(2)(D) to include in the notice such other information as it determines necessary for the protection of the consumer. The Board believes that, after considering the risks of not having an escrow account as disclosed in the notice, a consumer who originally requested cancellation of his or her escrow account may wish to keep it. The information to contact the creditor or servicer with a request to keep the escrow account should be readily

available to such consumers in the notice. The proposed rule would not require a creditor to obtain a toll-free telephone number that consumers may use to request the establishment of an escrow account. The Board proposes that a creditor disclose the telephone number that it has obtained for consumers to contact it regarding a variety of issues and that also may be used request establishment of an escrow account.

The Board is not proposing that creditors disclose whether a fee will be charged when a consumer changes his or her decision to cancel and requests to keep the escrow account. The Board understands that creditors do not charge a fee in such circumstances because the creditor has yet to expend resources in closing the escrow account. The Board seeks comment on this approach.

20(d)(3) Optional Information

Proposed § 226.20(d)(3) would permit the creditor or servicer providing the disclosure notice, at its option, to include its name or logo, or the consumer's name, property address, or loan number on the disclosure notice, outside of the table. Proposed comment 20(d)(3)–1 clarifies that § 226.20(d)(3) lists the information that the creditor or servicer may, at its option, include on the disclosure notice, outside of the table described in § 226.20(d)(1)(iii) that contains the required content of § 226.20(d)(2).

20(d)(4) Waiting Period for Disclosures

Proposed § 226.20(d)(4) would require the creditor or servicer to provide the disclosures regarding the cancellation of an escrow account so that the consumer receives them no later than three business days prior to closure of the escrow account. This proposed provision would implement the requirement of TILA Section 129D(j)(1)(B) for disclosures regarding cancellation of an escrow account in a "timely" manner. The waiting period in proposed § 226.20(d)(4) would parallel the waiting period in proposed § 226.19(f)(4) and would serve a similar purpose of providing a consumer sufficient time to consider the attendant responsibilities and risks of not having an escrow account.

Proposed comment 20(d)(4)–1 would clarify that, for purposes of § 226.20(d)(4), "business day" means all calendar days except for Sundays and specified legal public holidays. The Board believes that the definition of business day that excludes Sundays and public holidays is more appropriate than the more general definition because consumers should not be presumed to have received disclosures in the mail on a day on which there is no mail delivery. Proposed comment 20(d)(4)–2 would provide guidance regarding the timing requirement with an example that states if consummation is to occur on Thursday, June 11, the consumer must receive the disclosures on or before Monday, June 8, assuming there are no legal public holidays.

20(d)(5) Timing of Receipt

Proposed § 226.20(d)(5) also states that, if the disclosures are mailed to the consumer or delivered by means other than in person, the consumer is deemed to have received the disclosures three business days after they are mailed or delivered. Proposed comment 20(d)(5)–1 states that, if the creditor or servicer provides the disclosures in person, the escrow account may be closed any time on the third business day following delivery. If the creditor or servicer provides the disclosures by mail, receipt is presumed three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 226.20(d)(4) begins. The proposed comment also permits creditors or servicers that use electronic mail or courier to follow this approach. Whatever method is used to provide disclosures, creditors or servicers may rely on documentation of receipt in determining when the waiting period begins.

Section 226.34 Prohibited Acts or Practices in Connection With Credit Subject to § 226.32

34(a) Prohibited Acts or Practices for Loans Subject to § 226.32

34(a)(4) Repayment Ability

34(a)(4)(i) Mortgage-Related Obligations

The Board is proposing conforming amendments to § 226.34(a)(4)(i) and staff comment 34(a)(4)(i)–1. Both provisions contain cross-references to § 226.35(b)(3)(i). As discussed below, this proposal would remove and reserve § 226.35(b)(3)(i) and would preserve the substance of that provision in proposed new § 226.45(b)(1). This proposal would revise the two cross-references accordingly.

Section 226.35 Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans

35(b) Rules for Higher-Priced Mortgage Loans

35(b)(3) Escrows

The Board is proposing to remove and reserve § 226.35(b)(3), which currently contains the Board's escrow requirement for higher-priced mortgage loans. As discussed below, the escrow provisions of the Dodd-Frank Act would be implemented under this proposal by the addition of new § 226.45(b). To prevent duplication with new proposed § 226.45(b), this proposal would remove § 226.35(b)(3) and its accompanying commentary, including the special threshold for "jumbo" loans, as implemented by the "Jumbo" Final Rule in § 226.35(b)(3)(v). As discussed below, however, proposed § 226.45(a)(1) would preserve the "jumbo" threshold.

The Dodd-Frank Act also establishes new TILA provisions concerning a consumer's ability to repay and prepayment penalties that apply to all closed-end mortgage loans (other than loans secured by a timeshare), not just higher-priced mortgage loans. *See* TILA Sections 129C(a) and 129C(c). For higher-priced mortgage loans, those two matters currently are addressed by § 226.35(b)(1) and (2). The provisions of the Dodd-Frank Act regarding repayment ability and prepayment penalties will be implemented through future rulemakings. To preserve those existing protections for higher-priced mortgage loans until such future rulemakings are completed, however, the Board is not proposing to remove § 226.35(b)(1) and (2) at this time.

Section 226.45 Escrow Requirements for Higher-Priced Mortgage Loans

45(a) Higher-Priced Mortgage Loans

45(a)(1)

Proposed § 226.45(a)(1) would provide that a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling that has a loan pricing benchmark that exceeds the applicable threshold as of the date the transaction's rate is set. This definition tracks the meaning of "higher-priced mortgage loan" in current § 226.35(a)(1), with two differences. First, consistent with the 2010 Mortgage Proposal, the loan pricing benchmark would be the transaction coverage rate rather than the annual percentage rate. The transaction coverage rate is discussed in more detail below. Second, the applicable thresholds would be revised to reflect the special, separate coverage threshold for "jumbo" loans, as provided by the Dodd-Frank Act.

As noted above, the Dodd-Frank Act substantially codified the Board's escrow requirement for higher-priced mortgage loans, but with certain differences. One of those differences is the higher threshold above the average prime offer rate established by the Dodd-Frank Act for determining when

escrow accounts are required for loans that exceed the maximum principal balance eligible for sale to Freddie Mac. In general, the coverage thresholds are 1.5 percentage points above the average prime offer rate for first-lien loans and 3.5 percentage points above the average prime offer rate for subordinate-lien loans. Under the Dodd-Frank Act, the threshold is 2.5 percentage points above the average prime offer rate for "jumbo" loans.

The "Jumbo" Final Rule implements this special coverage test for "jumbo" loans by amending § 226.35(b)(3), which contains the Board's existing escrow requirement for higher-priced mortgage loans. This proposal would incorporate the threshold for "jumbo" loans contained in § 226.35(b)(3)(v) in proposed § 226.45(a)(1) because, after other provisions of the Dodd-Frank Act are implemented, the thresholds in existing § 226.35 will be necessary only to implement the escrow account requirement and certain appraisal-related requirements.[1] Accordingly, this proposal would implement the coverage test for higher-priced mortgage loans established by the Dodd-Frank Act, including the special coverage threshold for "jumbo" loans, in new § 226.45(a)(1).

45(a)(2) Definitions

Proposed § 226.45(a)(2) would define "transaction coverage rate" and "average prime offer rate." The latter definition, in § 226.45(a)(2)(ii), would be identical to the existing definition in current § 226.35(a)(2). This is consistent with the provisions of the Dodd-Frank Act, which codify the regulation's existing definition of "average prime offer rate." *See* TILA Section 129D(b)(3).

The definition of "transaction coverage rate" is the same definition included in the Board's 2010 Mortgage Proposal, discussed above. Accordingly, proposed § 226.45(a)(1) provides that the transaction coverage rate, rather than the annual percentage rate, is the metric used to determine whether a transaction is a higher-priced mortgage loan subject to § 226.45.

Under the proposal, the transaction coverage rate is a transaction-specific rate that would be used solely for coverage determinations; it would not be disclosed to consumers. The creditor would calculate the transaction coverage rate based on the rules in Regulation Z for calculation of the annual percentage rate, with one exception: The creditor would make the calculation using a modified value for the prepaid finance charge, as discussed below.

In the 2010 Mortgage Proposal, the Board explained the background and rationale for the proposed transaction coverage rate. *See* 75 FR 58539, 58660–61; Sept. 24, 2010. Briefly, the Board recognized that the use of the annual percentage rate as the coverage metric for the higher-priced mortgage loan protections poses a risk of over-inclusive coverage, which was intended to be limited to the subprime market. The Board noted that the average prime offer rate, against which the coverage metric is compared to determine whether a transaction is a higher-priced mortgage loan, is based on Freddie Mac's Primary Mortgage Market Survey® (PMMS). The PMMS surveys creditors for the loan pricing they currently offer consumers with low-risk transaction terms and credit profiles. The data the PMMS obtains, and therefore on which the average prime offer rate is based, are limited to contract interest rates and points. Annual percentage rates, on the other hand, are based on a broader set of charges, including some third-party charges such as mortgage insurance premiums. The Board also recognized that, under the 2009 Closed-End Proposal, the annual percentage rate would be based on a finance charge that includes most third-party fees in addition to points, origination fees, and any other fees the creditor retains. Thus, that proposal would expand the existing difference between fees included in the annual percentage rate and fees included in the average prime offer rate.

For the same reasons, the Board again is proposing to require creditors to compare the transaction coverage rate, rather than the annual percentage rate, to the average prime offer rate to determine whether a transaction is covered by the protections for higher-priced mortgage loans. The Board is making this proposal pursuant to its authority under Section 1461(b) of the Dodd-Frank Act to "prescribe rules that revise, add to, or subtract from the criteria of section 129D(b) of the Truth in Lending Act if the Board determines that such rules are in the interest of consumers and in the public interest." TILA Section 129D(b)(3) applies the escrow requirement to transactions with annual percentage rates that exceed the applicable thresholds. For the reasons discussed above, however, the Board believes that it is in the interest of consumers and the public to revise the coverage metric so that the protections for higher-priced mortgage loans are not inappropriately extended to prime loans, which may result in more limited credit availability where those protections are not warranted.

As noted above, the transaction coverage rate would be calculated according to the rules in Regulation Z for the calculation of the annual percentage rate, with one difference: The creditor would use a modified value for the prepaid finance charge in making this calculation. Under proposed § 226.45(a)(2)(i), the prepaid finance charge for purposes of calculating the transaction coverage rate would include only prepaid finance charges that will be retained by the creditor, a mortgage broker, or an affiliate of either. As discussed in the 2010 Mortgage Proposal, this test would make the coverage metric more similar to the average prime offer rate, which is based on contract interest rates and points only. This test also would avoid any uncertainty about what is included and would prevent creditors from evading coverage by shifting points into other charges or to affiliated third parties.

The Board also is proposing the same guidance in staff commentary under proposed § 226.45(a)(2) as currently exists under § 226.35(a) and as was proposed in the 2010 Mortgage Proposal. Proposed comment 45(a)(2)(i)–1 would clarify that the transaction coverage rate is not the annual percentage rate that is disclosed to the consumer and that it would be solely for coverage determination purposes. Proposed comment 45(a)(2)(i)–2 would clarify that the inclusion of charges retained by a mortgage broker would be limited to compensation that otherwise constitutes a prepaid finance charge and would illustrate this principle with an example. Proposed comments 45(a)(2)(ii)–1 through –4 would duplicate existing comments 35(a)(2)–1 through –4 with no substantive change.

Proposed comment 45(a)(2)(ii)–5 would be added to direct creditors to additional guidance on the average prime offer rate that is available in the staff commentary under Regulation C (Home Mortgage Disclosure) and other related authorities. This proposed

[1] Sections 1411, 1412, and 1414 of the Dodd-Frank Act create new TILA Section 129C, which establishes requirements for all residential mortgage loans relating to ability to repay and prepayment penalties. As these requirements are not limited to higher-priced mortgage loans, when implemented by rulemaking, they will leave the scope of existing § 226.35 limited to the escrow requirement. Section 1471 of the Dodd-Frank Act also creates new TILA Section 129H, which establishes certain new appraisal requirements, applicable to "higher-risk mortgages." New TILA Section 129H(f) defines "higher-risk mortgages" identically to the higher-priced mortgage loan definition in existing § 226.35(a)(1), with the addition of the separate threshold for "jumbo" loans. Thus, ultimately, the scope of the requirements applicable to "higher-risk mortgages" and the identically defined "higher-priced mortgage loans" will consist of the escrow and appraisal requirements.

comment is identical to guidance the Board proposed in the 2009 Closed-End Proposal. *See* 74 FR 43232, 43279; Aug. 26, 2009.

45(a)(3)

Proposed § 226.45(a)(3) would provide that a "higher-priced mortgage loan" does not include a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, a reverse mortgage transaction, or a home equity line of credit. This provision is identical to existing § 226.35(a)(3). In addition, the Board is proposing to adopt comment 45(a)(3)–1 to clarify how § 226.45 applies to cases where a creditor that extends financing for the initial construction of a dwelling also may permanently finance the home purchase. The proposed comment states that the construction phase is not a higher-priced mortgage loan, as provided in § 226.45(a)(3), regardless of the creditor's election to disclose such cases as either a single transaction or as separate transactions, pursuant to § 226.17(c)(6)(ii). This guidance would track the same guidance the Board proposed in the 2010 Mortgage Proposal. *See* 75 FR 58539, 58662–63; Sept. 24, 2010.

45(b) Escrow Accounts

45(b)(1) Requirement To Escrow for Property Taxes and Insurance

Proposed § 226.45(b)(1) would provide that a creditor may not extend a higher-priced mortgage loan secured by a first lien on a consumer's principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor. This provision parallels existing § 226.35(b)(3)(i). Proposed comments 45(b)(1)–1 through –3 parallel existing comments 35(b)(3)(i)–1 through –3. In addition, the Board is proposing comment 45(b)(1)–4 to clarify that the requirement to establish an escrow account for a first-lien higher-priced mortgage loan does not affect a creditor's right or obligation, pursuant to the terms of the legal obligation or applicable law, to offer or require an escrow account for a transaction that is not subject to § 226.45(b)(1).

Proposed § 226.45(b)(1) would implement TILA Section 129D(b)(3), as added by Section 1461 of the Dodd-Frank Act. TILA Section 129D(a) contains the general requirement that an escrow account be established for any consumer credit transaction secured by a consumer's principal dwelling (other than an open-end credit plan or a reverse mortgage). Section 129D(b), however, restricts that general requirement to four specified circumstances: (1) Where an escrow account is required by federal or state law; (2) where the loan is made, guaranteed, or insured by a state or federal agency; (3) where the transaction's annual percentage rate exceeds the average prime offer rate by prescribed amounts; and (4) where an escrow account is "required by regulation." This proposal would implement only the third of the four circumstances, pursuant to TILA Section 129D(b)(3), because the other three either are self-effectuating or are effectuated by other agencies' regulations. The thresholds in proposed § 226.45(a)(1) for determining whether a transaction is a higher-priced mortgage loan, discussed above, reflect the amounts over the average prime offer rate that trigger coverage of the statutory escrow requirement in TILA Section 129D(b)(3).

Proposed § 226.45(b)(1) also would state that, for purposes of § 226.45(b), "escrow account" has the same meaning as under Regulation X. This proposed provision would parallel existing § 226.35(b)(3)(iv).

45(b)(2) Exemptions

45(b)(2)(i)

Proposed § 226.45(b)(2)(i) would provide that escrow accounts need not be established for loans secured by shares in a cooperative. This provision would track existing § 226.35(b)(3)(ii)(A). It also is consistent with new TILA Section 129D(e), as added by Section 1461 of the Dodd-Frank Act.

45(b)(2)(ii)

Proposed § 226.45(b)(2)(ii) would provide that insurance premiums need not be included in escrow accounts for loans secured by dwellings in condominiums, planned unit developments (PUDs), or similar arrangements in which ownership requires participation in a governing association, where the governing association has an obligation to the dwelling owners to maintain a master policy insuring all dwellings. This provision would parallel existing § 226.35(b)(3)(ii)(B), with respect to condominium units. It also would implement new TILA Section 129D(e), as added by Section 1461 of the Dodd-Frank Act. That provision codifies the exemption for condominiums and also expands it to other, similar ownership arrangements involving associations that have an obligation to maintain a master insurance policy, such as PUDs. The Board is proposing comment 45(b)(2)(ii)–1 to parallel existing comment 35(b)(3)(ii)(B)–1 but with conforming amendments to reflect the expanded scope of the exemption. The Board is also proposing comment 45(b)(2)(ii)–2 to provide details about the nature of PUDs and to clarify that the exemption is available for not only condominium and PUD units but also any other type of property ownership arrangement that has a governing association with an obligation to maintain a master insurance policy.

45(b)(2)(iii)

Under TILA Section 129D(c), the Board is authorized to exempt from the escrow requirement a creditor that (1) operates predominantly in rural or underserved areas; (2) together with all affiliates has total annual mortgage loan originations that do not exceed a limit set by the Board; (3) retains its mortgage loan originations in portfolio; and (4) meets any asset-size threshold and any other criteria the Board may establish. Proposed § 226.45(b)(2)(iii) would provide an exemption consistent with that provision. Under proposed § 226.45(b)(2)(iii), the escrow requirement would not apply to a higher-priced mortgage loan extended by a creditor that makes most of its first-lien higher-priced mortgage loans in counties designated by the Board as "rural or underserved," together with its affiliates originates and services 100 or fewer first-lien mortgage loans, and together with its affiliates does not escrow for any mortgage loan it services.

Operates Predominantly in Rural or Underserved Areas

Under proposed § 226.45(b)(2)(iii)(A), to obtain the exemption, a creditor must have made during the preceding calendar year more than 50% of its total first-lien, higher-priced mortgage loans in counties designated by the Board as "rural or underserved." Proposed comment 45(b)(2)(iii)–1 would state that the Board publishes annually a list of counties that qualify as "rural" or "underserved." The Board's annual determinations would be based on the criteria set forth in proposed § 226.45(b)(2)(iv), discussed below.

"*Areas.*" In determining what is a rural or underserved area, the Board is proposing to use counties as the relevant area. The Board believes that the county level is the most appropriate area for this purpose, even though the sizes of counties can vary. In determining the relevant area for consumers who are shopping for

mortgage loans, census tracts would be too small, while states generally would be too large. Because a single standard nationwide would facilitate compliance, the Board is proposing to use counties for all geographic areas. The Board seeks comment on the appropriateness of this approach.

"*Operates predominantly.*" As noted, the proposed rule requires a creditor to have made during the preceding calendar year more than 50% of its total first-lien higher-priced mortgage loans in "rural or underserved" counties. The Board believes that "predominantly" indicates a portion greater than half, hence the proposed regulatory requirement of more than 50%. The Board proposes to implement "operates" consistently with the scope of the escrow requirement. Thus, because the escrow requirement applies only to first-lien higher-priced mortgage loans, only those loans would be counted toward this element of the exemption. The Board solicits comment on the appropriateness of both of these proposed interpretations.

Total Annual Mortgage Loan Originations

As noted above, the Dodd-Frank Act authorizes the Board to establish an annual limit on loans originated in adopting any exemption. Under proposed § 226.45(b)(2)(iii)(B), to obtain the exemption, a creditor and its affiliates together during either of the preceding two calendar years must have originated and retained the servicing rights to 100 or fewer loans secured by a first lien on real property or a dwelling. The Board is also establishing three criteria not specified in the statute: (1) A requirement that the lender retain servicing rights in addition to originating loans; (2) the establishment of 100 or fewer as the originations limit; and (3) the use of either of the preceding two calendar years.

Retention of servicing rights. Proposed § 226.45(b)(2)(iii)(B) would provide that the creditor, together with any affiliates, must have originated and retained the servicing rights to 100 or fewer loans. As noted above, the statute does not include retention of the servicing rights in this condition of the exemption. The Board is proposing this adjustment to the requirement for an annual-originations limit pursuant to its authority under TILA Section 105(a), 15 U.S.C. 1604(a), to provide for such adjustments and exceptions as are necessary or proper to effectuate the purposes of TILA. The Board believes that, to effectuate meaningfully the purpose of the exemption, this test should include only those loans both made and serviced by the creditor and its affiliates.

The Board believes the purpose of the exemption is to recognize that maintaining escrow accounts is burdensome, and not cost-effectively feasible, unless a servicer maintains at least a certain minimum portfolio size. The proposed exemption thus permits creditors that do not possess these economies of scale to continue to offer credit to consumers, rather than leave the higher-priced mortgage loan market, provided the other criteria for the exemption also are satisfied. But the economies of scale needed to escrow cost-effectively are achieved only to the extent a creditor actually services its originations. Accordingly, the Board's proposal would base the exemption on only originations for which the creditor (or its affiliates) retained the servicing rights.

100 or fewer loans. TILA Section 129D(c)(2) requires the Board to establish a limit on annual originations for purposes of the exemption. As discussed above, in approaching this element of the exemption, the Board seeks to limit the exemption to creditors that maintain servicing portfolios too small to be able to escrow cost-effectively. Based on a review of mortgage subservicers' fee schedules, the Board estimates that, on average, the monthly cost per loan to outsource servicing (including escrowing) is $17 for a 500-loan portfolio and $21 for a 250-loan portfolio. Data obtained from the Mortgage Bankers Association's Quarterly Mortgage Bankers Performance Report for the third quarter of 2008 indicate that the average monthly cost per loan to service a portfolio in-house (including but not limited to escrowing), for portfolios averaging 472 loans, is approximately $20; this figure represents ongoing costs, including personnel, technology, equipment, and similar recurring costs, but it does not include initial set-up costs. The Board believes from the available information that the economies of scale necessary to escrow cost-effectively, or else to satisfy the escrow requirement by outsourcing to a sub-servicer, generally exist when a mortgage servicer has a portfolio of at least 500 mortgage loans.

TILA Section 129D(c)(2) calls for an annual-originations limit, however, as opposed to a portfolio-size limit. In light of the statutory provision, to effectuate the purpose of the exemption, the Board is proposing to set the cut-off for this element of the exemption at 100 or fewer mortgage loans originated and serviced; an assumed average of five years until an institution's loans are paid off would suggest that originating (and retaining the servicing rights to) 100 or fewer mortgages per year should correspond to servicing 500 or fewer loans. The Board seeks comment on the validity of this assumption and whether some other number of originations might better serve the purpose of the exemption.

Either of the preceding two calendar years. The Board is proposing that the test be satisfied as long as the creditor's (and its affiliates') servicing-retained originations do not exceed 100 during either of the preceding two calendar years. Under this two-year "look back," an institution that has been exempt would not have to begin complying with the escrow requirement until at least one full year after it first exceeds the threshold. Proposed comment 45(b)(2)(iii)–1 would clarify that a creditor would lose the exemption if it exceeds the threshold for two consecutive calendar years and would illustrate this rule with an example.

As indicated above, the Board believes the purpose of the exemption is to permit creditors that lack the economies of scale necessary to escrow cost-effectively to continue to offer credit to consumers, rather than leave the higher-priced mortgage loan market, provided the other criteria for the exemption also are satisfied. The Board recognizes that the originations limit, if applied for only one year, could cause operational problems when institutions first exceed the threshold. An institution that was exempt and becomes subject to the requirement because it first originates and services over 100 loans could not establish escrow accounts retroactively on its existing portfolio without the agreement of its existing customers. Such an institution then would face the prospect of establishing escrows for the small number of loans it makes going forward and still would not have achieved the necessary economies of scale. The proposed two-year coverage test should afford an institution sufficient time after first exceeding the threshold to acquire an escrowing capacity. The Board solicits comment on the appropriateness of this two-year coverage test.

Creditor and Affiliates Do Not Maintain Escrows

Under proposed § 226.45(b)(2)(iii)(C), to obtain the exemption, the creditor and its affiliates must not maintain an escrow account for any mortgage loan they currently service. The Board is proposing this provision pursuant to its authority in TILA Section 129D(c)(4) to include in this exemption "any other criteria the Board may establish." The

Board believes this additional condition is necessary to effectuate the purpose of the exemption.

If a creditor already establishes or maintains escrow accounts, it has the capacity to escrow and therefore has no need for the exemption. Moreover, a creditor's capacity to escrow should reflect not only its own activities but those of any affiliate. The Board believes a creditor's affiliate that has the capacity to escrow can enable the creditor to meet the escrow requirement. The Board seeks comment, however, on whether an affiliate's capacity to escrow should be considered. Proposed comment 45(b)(2)(iii)–1 would explain that this restriction applies only to mortgage loans serviced by the creditor and its affiliates at the time a transaction is consummated. Thus, the exemption still could apply even if, in the past, any of them has established and maintained escrows for mortgage loans it no longer services. If a creditor or an affiliate escrows for loans currently serviced, however, they all would become ineligible for the exemption on higher-priced mortgage loans that they make thereafter.

The Board recognizes that a creditor sometimes may hold a loan for a short period after consummation to take the steps necessary before transferring and assigning it to its intended investor. This period on occasion may extend even beyond the loan's first installment due date, especially if the first payment due date comes shortly after consummation. The proposed rule would recognize that, in such cases, a creditor that establishes an escrow account for the investor is not deemed to have established an escrow account in connection with a loan for which it retains the servicing rights. Accordingly, proposed comment 45(b)(2)(iii)–1 also would clarify that a creditor or its affiliate "maintains" an escrow account for a loan only if it services the mortgage loan at least through the due date of the second periodic payment under the terms of the legal obligation. The Board seeks comment on whether the second payment due date is the appropriate cut-off point for this purpose.

Under § 226.45(b)(2)(iii)(C), as proposed, a creditor would not be eligible for the exemption if it escrows for even a single loan. A creditor that lacks the capacity to escrow cost-effectively and does not maintain escrow accounts as a general matter nevertheless may undertake to escrow for one customer, or possibly only a few customers, as an accommodation to those customers at their request. The Board therefore solicits comment on whether this provision instead should allow some *de minimis* number of loans for which escrows are maintained and, if so, what that number should be. For example, would a limit of not more than five loans for which escrows are currently maintained be appropriate?

Asset-Size Threshold Not Proposed

The Board is not proposing an asset-size threshold as a condition of the exemption, even though TILA Section 129D(c)(4) authorizes the Board to do so. As discussed above, the Board believes that a creditor's ability to establish escrow accounts, and thus continue offering higher-priced mortgage loans, depends mainly on whether the creditor services enough mortgage loans to make escrow accounts a cost-effective option. The annual originations test discussed above serves as a proxy for having a small servicing portfolio. Mortgage creditors with limited assets likely also would satisfy the annual originations test. Nevertheless, the Board believes that a relatively large creditor (based on asset size) might make and service only a small number of mortgage loans. If such a creditor may cease making higher-priced mortgage loans because it lacks the necessary economies of scale to escrow for so few mortgage loans, the Board believes the creditor should not be denied the exemption merely because it happens to have substantial non-mortgage assets. Thus, the Board solicits comment on whether such a condition should be established and, if so, what asset-size threshold would be appropriate.

45(b)(2)(iv)

Proposed § 226.45(b)(2)(iv) would set out the criteria for a county to be designated by the Board as "rural or underserved" for purposes of § 226.45(b)(2)(iii)(A), discussed above. Under that section, a creditor's originations of first-lien higher-priced mortgage loans in all counties designated as "rural or underserved" during a calendar year are measured as a percentage of the creditor's total such originations during that calendar year to determine whether the creditor may be eligible for the exemption during the following calendar year. If the creditor's first-lien higher-priced mortgage loan originations in "rural or underserved" counties during a calendar year exceeds 50% of the creditor's total such originations in that calendar year, the creditor satisfies § 226.45(b)(2)(iii)(A) for purposes of the following calendar year.

Proposed § 226.45(b)(2)(iv) would establish separate criteria for both "rural" and "underserved," thus a county could qualify for designation by the Board under either definition. Under proposed § 226.45(b)(2)(iv)(A), a county would be designated as "rural" during a calendar year if it is not in a metropolitan area or a micropolitan area and either (1) it is not adjacent to any metropolitan or micropolitan area; or (2) it is adjacent to a metropolitan area with fewer than one million residents or adjacent to a micropolitan area, and it contains no town with 2500 or more residents. Under proposed § 226.45(b)(2)(iv)(B), a county would be designated as "underserved" during a calendar year if no more than two creditors extend consumer credit secured by a first lien on real property or a dwelling five or more times in that county. These two definitions are discussed in more detail below.

"Rural"

The Board is proposing to limit the definition of "rural" areas to those areas most likely to have only limited sources of mortgage credit. The test for "rural" in proposed § 226.45(b)(2)(iv)(A), described above, is based on the "urban influence codes" numbered 7, 10, 11, and 12, maintained by the Economic Research Service (ERS) of the United States Department of Agriculture. The ERS devised the urban influence codes to reflect such factors as counties' relative population sizes, degrees of "urbanization," access to larger communities, and commuting patterns.[2] The four codes captured in the proposed "rural" definition represent the most remote rural areas, where ready access to the resources of larger, more urban communities and mobility are most limited. Proposed comment 45(b)(2)(iv)–1 would state that the Board classifies a county as "rural" if it is categorized under ERS urban influence code 7, 10, 11, or 12. The Board seeks comment on all aspects of this approach to designating "rural" counties, including whether the definition should be broader or narrower, as well as whether the designation should be based on information other than the ERS urban influence codes.

"Underserved"

In determining what areas should be considered "underserved," the Board has considered the minimum number of creditors that must be engaged in significant mortgage operations in an area for consumers to have meaningful access to mortgage credit. The test for "underserved" in proposed § 226.45(b)(2)(iv)(B), described above, is

[2] *See http://www.ers.usda.gov/briefing/Rurality/UrbanInf/.*

based on the Board's judgment that, where no more than two creditors are significantly active (measured by extending mortgage credit at least five times in a year), the inability of one creditor to offer a higher-priced mortgage loan would be detrimental to consumers who would have limited credit options. Thus, proposed § 226.45(b)(2)(iv)(B) would designate a county as "underserved" during a calendar year if no more than two creditors extend consumer credit secured by a first lien on real property or a dwelling five or more times in that county. Proposed comment 45(b)(2)(iv)–1 would state that the Board bases its determinations of whether counties are "rural" for purposes of § 226.45(b)(2)(iii)(A) by reference to data submitted by mortgage lenders under the Home Mortgage Disclosure Act (HMDA).

The Board believes the purpose of the exemption is to permit creditors that lack the economies of scale necessary to escrow cost-effectively to continue to offer credit to consumers, rather than leave the higher-priced mortgage loan market, if such creditors' withdrawal would significantly limit consumers' ability to obtain mortgage credit. In light of this rationale, the Board believes that "underserved" should be implemented in a way that protects consumers from losing meaningful access to mortgage credit. The Board is proposing to do so by designating as "underserved" only those areas where the withdrawal of a creditor from the market could leave no meaningful competition for consumers' mortgage business. The Board seeks comment on the appropriateness of both the proposed use of two or fewer existing competitors to delineate areas that are "underserved" and the proposed use of five or more first-lien mortgage originations to identify competitors with a significant presence in a market.

45(b)(2)(v)

Proposed § 226.45(b)(2)(v) would provide that the exemption is not available for certain transactions that, at consummation, are subject to "forward commitments," which are agreements entered into at or before consummation of a transaction under which a purchaser is committed to acquire the loan from the creditor after consummation. Mortgage creditors often make loans for which they already have obtained such a commitment from a purchaser, which may be obligated to purchase the specific loan or to purchase loans meeting prescribed criteria. In the latter case, if a transaction meets the criteria, it is subject to the purchaser's forward commitment. The Board is proposing this provision to implement TILA Section 129D(c)(3), which requires that a creditor retain its mortgage loan originations in portfolio to qualify for the exemption from the escrow requirement.

The Board considered requiring that a transaction be held in portfolio as a condition of the exemption. This approach, however, would raise operational problems. Whether a loan is held in portfolio can be determined only after consummation, but a creditor making a higher-priced mortgage loan must know by consummation whether it is subject to the escrow requirement. The Board expects that a creditor would be reluctant to make a loan it does not intend to keep in portfolio unless it has the assurance of a committed buyer before extending the credit. Thus, proposed § 226.45(b)(2)(v) would serve as a means of indirectly limiting the exemption to loans that are to be held in portfolio.

The Board believes that the rationale for the exemption is not present when a loan will be acquired pursuant to a forward commitment by a purchaser that does not qualify for the exemption, even if the creditor making the loan is exempt. Accordingly, under proposed § 226.45(b)(2)(v), the escrow requirement would apply to a higher-priced mortgage loan that, at consummation, is subject to a forward commitment to be acquired by a person that is not exempt. Proposed comment 45(b)(2)(v)–1 would clarify that the transaction is not exempt, whether the forward commitment provides for the purchase and sale of the specific transaction or for the purchase and sale of loans with certain criteria that the transaction meets.

The Board seeks comment on whether institutions could easily evade the escrow requirement by making higher-priced mortgage loans without a forward commitment in place and thereafter selling them to non-exempt purchasers. The Board also seeks comment on how it might address this possibility without relying on post-consummation events as part of the test. For instance, should the Board include a provision making it a violation of the escrow requirement to engage in a pattern or practice of making higher-priced mortgage loans without escrows under the exemption (with no forward commitment in place) and then selling them within some defined period after consummation?

45(b)(3) Cancellation

Proposed § 226.45(b)(3) would establish minimum durations for escrow accounts required by § 226.45(b)(1). Proposed § 226.45(b)(3)(i) would implement TILA Section 129D(d)(4) by requiring the creditor or servicer to maintain an escrow account established pursuant to proposed § 226.45(b)(1) for a minimum of five years following consummation, unless the underlying debt obligation is terminated earlier. Proposed § 226.45(b)(3)(i) would allow, but not require, a creditor or servicer to cancel the escrow account after five years upon receipt of a request from the consumer. Proposed § 226.45(b)(3)(ii) would implement TILA Sections 129D(d)(1)–(3) by prohibiting the cancellation of an escrow account pursuant to a consumer's request under proposed § 226.45(b)(3)(i) unless at least 20% of the original value of the property securing the underlying debt obligation is unencumbered and the consumer currently is not delinquent or in default on the underlying debt obligation. Assuming the requirements of § 226.45(b)(3) were met, a creditor could, but would not be required to, cancel consumer's escrow account pursuant to the consumer's request, even if the consumer had been delinquent in making mortgage payments in the past. As long as the consumer brought his or her account current and had been making timely payments when the request was made, the creditor could close the escrow account.

The Board's proposed provisions to implement TILA Section 129D(d)(1)–(3) are modeled after the prerequisites for borrower cancellation of private mortgage insurance coverage under the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. 4901–4910. The Board seeks comment on the appropriateness of those standards, in light of the language used in TILA Section 129D(d)(1)–(3). In particular, TILA Section 129D(d)(1) states that an escrow account mandated by TILA Section 129D(b) must remain in existence, even if five years have elapsed, unless and until the "borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance." The Board seeks comment on whether TILA Section 129D(d)(1) should be interpreted narrowly to mean that, among consumers with escrow accounts required pursuant to proposed § 226.45(b)(1), only those that in fact have private mortgage insurance must meet the minimum equity requirement under the HPA as a prerequisite for cancelling their escrow accounts.

Proposed comment 45(b)(3)–1 would clarify that termination of the underlying credit obligation could include, among other things, repayment,

refinancing, rescission, and foreclosure. Proposed comment 45(b)(3)–2 would clarify that proposed § 226.45(b)(3) does not affect the right or obligation of a creditor or servicer, pursuant to the terms of the legal obligation or applicable law, to offer or require an escrow account after the minimum period dictated by § 226.45(b)(3).

Proposed comment 45(b)(3)–3 would clarify that the term "original value" in § 226.45(b)(3)(ii)(A) means the lesser of the sales price reflected in the sales contract for the property, if any, or the appraised value of the property at the time the transaction was consummated. This meaning of "original value" is adopted from Section 2(12) of the HPA. 12 U.S.C. 4901(12). The Board is cognizant of the recent nation-wide decline of property values. The Board recognizes that, under the proposal, a creditor or servicer may honor a consumer's request to cancel their escrow account when the consumer has met all of the pre-conditions of § 226.45(b)(3) even when the consumer does not have 20% equity in their home because of depressed property values at the time. The Board believes that using some method other than the HPA as a model for determining when a borrower has sufficient equity in the property would prove too complicated and create uncertainty. However, the Board solicits comment on the proposed approach.

Proposed comment 45(b)(3)–3 also would clarify that, in determining whether 20% of the original value of the property securing the underlying debt obligation is unencumbered, the creditor or servicer must count any subordinate lien of which it has reason to know. The proposed comment would further state that, if the consumer certifies in writing that the equity in the property is unencumbered by a subordinate lien, the creditor or servicer may rely upon the certification in making its determination. This approach is derived from Section 3(a)(4)(B) of the HPA, 12 U.S.C. 4902(a)(4)(B). Under that provision, the mortgagor must certify that there is no subordinate lien on the property as a prerequisite for cancellation of private mortgage insurance. The Board is proposing a modified version of this approach. Under the proposal, an escrow account could be cancelled, provided that all liens do not exceed 80% of the property's original value. The Board seeks comment on whether this approach is appropriate. Alternatively, the Board solicits comment on whether subordinate-lien loans should be disregarded when calculating the consumer's equity.

45(c)

The Board is proposing to reserve § 226.45(c) for future use in implementing Section 1471 of the Dodd-Frank Act, which creates new TILA Section 129H to establish certain appraisal requirements applicable to "higher-risk mortgages."

45(d) Evasion; Open-End Credit

Proposed § 226.45(d) would provide that, in connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in § 226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of § 226.45. This proposed provision would parallel existing § 226.35(b)(4).

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

The Board is proposing to revise staff comment App. G and H–1 to provide guidance on permissible changes to the new model forms the Board is proposing. Appendices G and H set forth model forms, model clauses and sample forms that may be used to comply with the requirements of Regulation Z. Appendix G contains model forms, model clauses and sample forms applicable to open-end plans. Appendix H contains model forms, model clauses and sample forms applicable to closed-end loans. Although use of the model forms and clauses is not required, proper use will be deemed to be in compliance with the regulation with regard to those disclosures. As discussed above, the Board proposes to add several model forms to Appendix H for the disclosure requirements applicable to the establishment, non-establishment, and cancellation of escrow accounts. The new model forms are discussed above in the section-by-section analysis applicable to the regulatory provisions to which the forms relate. *See* discussion under §§ 226.19(f) (establishment or non-establishment of escrow account at consummation) and 226.20(d) (cancellation of escrow account after consummation).

Existing comment App. G and H–1 discusses changes that may be made to the model forms and clauses. The comment also lists the models to which formatting changes may not be made because the disclosures must be made in a form substantially similar to that in the models to retain the safe harbor from liability. The Board is proposing to add Model Forms H–24 (establishment of escrow account at consummation), H–25 (non-establishment of escrow account at consummation), and H–26 (cancellation of an escrow account after consummation) to the list of forms to which formatting changes may not be made. As discussed in more detail in the section-by-section analysis to proposed § 226.19(f)(1), proposed § 226.19(f)(1)(i) requires that creditors provide the § 226.19(f)(2) disclosures with the headings, content, order, and format substantially similar to Model Form H–24 or H–25. As discussed in more detail in the section-by-section analysis to proposed § 226.20(d)(1), proposed § 226.20(d)(1)(i) requires that servicers provide the § 226.20(d)(2) disclosures with the headings, content, order, and format substantially similar to Model Form H–26.

Appendix H—Closed-End Model Forms and Clauses

The Board is proposing to add three new model forms to Appendix H for use in complying with the new disclosure requirements discussed above. Appendix H to part 226 sets forth model forms, model clauses and sample forms that may be used to comply with requirements of Regulation Z for closed-end credit. Although use of the model forms and clauses generally is not required, proper use is deemed to be in compliance with the regulation with regard to those disclosures.

The proposed new model forms could be used by creditors to comply with the disclosure requirements of proposed § 226.19(f) regarding the establishment or non-establishment of an escrow account and of proposed § 226.20(d) regarding the cancellation of an escrow account established in connection with a closed-end transaction secured by a first lien on real property or a dwelling. Accordingly, the Board proposes to add Model Form H–24 Establishment of Escrow Account; Model Form H–25 Non-Establishment of Escrow Account; and Model Form H–26 Cancellation of Escrow Account to illustrate the disclosures required under proposed §§ 226.19(f) and 226.20(d).

The Board also proposes new comment App. H–29, which would provide guidance on how to use Model Forms H–24 through H–26. Proposed comment App. H–29.i states that the model forms illustrate, in the tabular format, the disclosures required by proposed §§ 226.19(f) and 226.20(d). Proposed comment App. H–29.ii specifies that a creditor satisfies § 226.19(f)(2) if it provides the appropriate model form (H–24 or H–25) and a servicer satisfies § 226.20(d)(2) if it provides Model Form H–26, or a substantially similar notice, which is properly completed with the disclosures

required by § 226.19(f)(2) or § 226.20(d)(2), respectively. Proposed comment App. H–29.iii provides that, although creditors are not required to use a certain paper size in disclosing the rescission notice required under §§ 226.19(f) and 226.20(d), Model Forms H–24 through H–26 are designed to be printed on an 8½ x 11 inch sheet of paper. In addition, proposed comment App. H–29.iii provides details of the formatting techniques that were used in presenting the information in the model forms to ensure that the information is readable.

Proposed comment App. H–29.iv states that, while the regulation does not require creditors or servicers to use the formatting techniques described in comment App. H–29.iii (except for the 10-point minimum font requirement), creditors and servicers are encouraged to consider these techniques when deciding how to disclose information in the notice to ensure that the information is presented in a readable format. Proposed comment App. H–29.v clarifies that creditors and servicers may use color, shading and similar graphic techniques with respect to the notice, so long as the notice remains substantially similar to the model forms in Appendix H.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is [7100–0199].

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation Z.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with some products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months, § 226.25, but Regulation Z identifies only a few specific types of records that must be retained.[3]

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in consumer credit activities covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 1,497,362 hours for the 1,138 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. A detailed discussion of revised burden is presented in the following two paragraphs. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

As discussed in the preamble, the Board proposes the addition of format, timing, and content requirements for the new disclosures regarding escrow accounts for closed-end mortgages secured by a first lien on real property or a dwelling that shall be provided three business days before consummation or before closure of an escrow account. The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 45,520 hours, from 1,497,362 to 1,542,882 hours. In addition, the Board estimates that, on a continuing basis, the proposed rule would increase the total annual burden by 109,248 hours from 1,497,362 to 1,606,610 hours.[4]

The Board estimates that the 1,138 respondents regulated by the Federal Reserve would take, on average, 40 hours (one business week) to update their systems and internal procedure manuals and to provide training for relevant staff to comply with the new disclosure requirements in §§ 226.19(f) and 226.20(d). This one-time revision will increase the burden by 45,520 hours. On a continuing basis, the Board estimates that 1,138 respondents regulated by the Federal Reserve will take, on average, 8 hours a month to comply with the new disclosure requirements and that the new requirements will increase the ongoing burden by 109,248 hours from 304,756 to 353,276 hours. To ease the burden and cost of complying with the new requirements under Regulation Z, the Board is adding several model forms to Appendix H.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Board expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent.

The other Federal financial agencies—Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA)—are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and Federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15. U.S.C. 1607(a). These agencies are permitted, but are not required, to use the Board's burden

[3] *See* comments 25(a)–3 and –4.

[4] The burden estimate for this rulemaking does not include the burden addressing changes to implement the following provisions announced in separate rulemakings:

1. Closed-End Mortgages (Docket No. R–1366) (74 FR 43232);

2. Home-Equity Lines of Credit (Docket No. R–1367) (74 FR 43428); or

3. Mortgage Disclosure Improvement Act (Docket No. R–1366).

estimation methodology. Using the Board's method, the total current estimated annual burden for the approximately 16,200 domestically chartered commercial banks, thrifts, and Federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA would be approximately 21,813,445 hours. The proposed rule would impose a one-time increase in the estimated annual burden for such institutions by 648,000 hours to 22,461,445 hours. On a continuing basis the proposed rule would impose an increase in the estimated annual burden by 1,555,200 to 23,368,645 hours. The above estimates represent an average across all respondents; the Board expects variations between institutions based on their size, complexity, and practices.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project ([7100–0199]), Washington, DC 20503.

VI. Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Under regulations issued by the Small Business Administration (SBA), an entity is considered "small" if it has $175 million or less in assets for banks and other depository institutions, and $7 million or less in revenues for non-bank mortgage lenders and loan servicers.[5]

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Board requests public comment in the following areas.

A. Reasons for the Proposed Rule

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is providing a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Board's Regulation Z.

Congress enacted Sections 1461 and 1462 of the Dodd-Frank Act as amendments to TILA. As amended, TILA requires the establishment of escrow accounts for certain transactions, provides for certain exemptions from the requirement, establishes minimum periods for which such required escrow accounts must be maintained, and requires certain disclosures relating to escrow accounts. The proposed amendments to Regulation Z would implement those requirements. These amendments are proposed in furtherance of the Board's responsibility to prescribe regulations to carry out the purposes of TILA, including promoting consumers' awareness of the cost of credit and their informed use thereof.

B. Statement of Objectives and Legal Basis

Part IV of the **SUPPLEMENTARY INFORMATION** contains a detailed statement of the proposed rule's objectives and legal basis. In summary, the proposed amendments to Regulation Z are intended (1) to implement the definition of "higher-priced mortgage loan" and the requirement that creditors establish escrow accounts for such loans, in §§ 226.45(a) and 226.45(b)(1); (2) to provide exemptions from the escrow requirement for loans secured by shares in a cooperative, for insurance premiums for loans secured by dwellings in condominiums, planned-unit developments, and similar arrangements, and for loans made by certain small creditors that operate predominantly in rural or underserved areas, in § 226.45(b)(2); (3) to revise the rules setting the minimum durations for which required escrow accounts must be maintained, in § 226.45(b)(3); and (4) to require that creditors provide consumers with certain disclosures regarding escrow accounts, in §§ 226.19(f) and 226.20(d). All of these proposed provisions are pursuant to amendments to TILA adopted by the Dodd-Frank Act. The legal basis for the proposed rule is in TILA Sections 105(a), 105(f), and 129D. 15 U.S.C. 1604(a), 1604(f), and 1638D.

C. Description of Small Entities to Which the Proposed Rule Would Apply

The proposed regulations would apply to all institutions and entities that engage in originating or extending home-secured credit, as well as servicers of these loans. The Board is not aware of a reliable source for the total number of small entities likely to be affected by the proposal, and the credit provisions of TILA and Regulation Z have broad applicability to individuals and businesses that originate, extend, and service even small numbers of home-secured credit. *See* § 226.1(c)(1).[6] All small entities that originate, extend, or service closed-end loans secured by real property or a dwelling potentially could be subject to at least some aspects of the proposed rules.

The Board can, however, identify through data from Reports of Condition and Income ("Call Reports") approximate numbers of small depository institutions that would be subject to the proposed rules. According to September 2010 Call Report data, approximately 8,669 small depository institutions would be subject to the rule. Approximately 15,627 depository institutions in the United States filed Call Report data, approximately 10,993 of which had total domestic assets of $175 million or less and thus were

[5] 13 CFR 121.201; *see also* SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[6] Regulation Z generally applies to "each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly, (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments, and (iv) the credit is primarily for personal, family, or household purposes." § 226.1(c)(1).

considered small entities for purposes of the RFA. Of the 3,788 banks, 507 thrifts, 6,632 credit unions, and 66 branches of foreign banks that filed Call Report data and were considered small entities, 3,667 banks, 479 thrifts, 4,520 credit unions, and 3 branches of foreign banks, totaling 8,669 institutions, extended mortgage credit. For purposes of this Call Report analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks. Further, 1,303 non-depository institutions (independent mortgage companies, subsidiaries of a depository institution, or affiliates of a bank holding company) filed HMDA reports in 2010 for 2009 lending activities. Based on the small volume of lending activity reported by these institutions, most are likely to be small entities.

Certain parts of the proposed rule would also apply to mortgage servicers. The Board is not aware, however, of a source of data for the number of small mortgage servicers. The available data are not sufficient for the Board realistically to estimate the number of mortgage servicers that would be subject to the proposed rules and that are small as defined by SBA.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the proposed rules are described in part III of the **SUPPLEMENTARY INFORMATION**. The effect of the proposed revisions to Regulation Z on small entities is unknown. Some small entities would be required, among other things, to implement the new disclosures and processes for delivery thereof, as well as their systems for determining which transactions are subject to the escrow requirement, to comply with the revised rules. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and to administer and maintain escrow accounts.

Small entities would have broader exemptions from the escrow requirement potentially available, thus enjoying cost savings. The proposed rule also would provide creditors with additional guidance on the determination of the average prime offer rate for a comparable transaction and clarification of the higher-priced mortgage loan protections' applicability to construction-permanent financing, accordingly lowering compliance costs for small entities.

The proposed rule would require creditors to determine whether a loan is a higher-priced mortgage loan by comparing the loan's rate without third-party fees (the "transaction coverage rate") to the average prime offer rate. The transaction coverage rate would be calculated using the loan's interest rate and the points and any other origination charges the creditor keeps for itself, and thus would be more closely comparable to the average prime offer rate. The precise costs to small entities of updating their systems to implement this change are difficult to predict. The proposal would reduce potential compliance burden for all entities, including small entities, by ensuring that prime loans are not erroneously classified as higher-priced mortgage loans subject to the special protections for such loans.

The Board believes that costs of the proposed rule as a whole will have a significant economic effect on small entities, including small mortgage creditors and servicers. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rules to small businesses.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Duplicative and Conflicting Federal Rules

The Board has not identified any Federal rules that conflict with the proposed revisions to Regulation Z.

Overlap With RESPA

Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), includes rules governing the administration of escrow accounts and requires certain periodic escrow analyses and delivery of escrow account statements to consumers. *See* 24 CFR 3500.17. The escrow account statements required by Regulation X must include dollar amounts representing, among other things, the amount required initially to fund the escrow account, the periodic payment amount required to maintain the escrow account, and the annual amounts estimated to be paid out of the account for items covered by the escrow account such as taxes and insurance. These items overlap with dollar amounts that would be required as part of the disclosures this proposed rule would adopt. To ease compliance, the proposed rule would provide that creditors comply with the requirement to disclose those amounts if they use the same amounts determined in accordance with Regulation X.

F. Identification of Duplicative, Overlapping, or Conflicting State Laws

State Equivalents to TILA and HOEPA

Many states regulate consumer credit through statutory disclosure schemes similar to TILA. Under TILA Section 111, the proposed rules would not preempt such state laws except to the extent they are inconsistent with the proposal's requirements. 15 U.S.C. 1610.

The Board also is aware that many states regulate "high-cost" or "high-priced" mortgage loans under laws that resemble HOEPA. Many of these state laws involve coverage tests that partly depend on the APR of the transaction. The proposed rules would overlap with these laws by requiring lenders to determine whether a loan is a higher-priced mortgage loan by comparing the loan's transaction coverage rate to the average prime offer rate. Such state laws would not be affected, however, by the proposed transaction coverage rate approach to coverage of the Board's protections for higher-priced mortgage loans.

State Laws Regulating Escrow Accounts

Some state laws deal with escrow account administration, including laws that require the payment to consumers of interest on required escrow accounts and laws that prohibit a creditor from requiring an escrow account under specified circumstances. The proposed rules would not preempt such state laws except to the extent they are inconsistent with the proposal's requirements. *Id.*

The Board seeks comment regarding any state or local statutes or regulations that would duplicate, overlap, or conflict with the proposed rules.

G. Discussion of Significant Alternatives

The steps the Board has taken to minimize the economic impact and compliance burden on small entities, including the factual, policy, and legal reasons for selecting the alternatives adopted and why each one of the other significant alternatives was not accepted, are described above in the **SUPPLEMENTARY INFORMATION**. The Board has provided a different standard for defining higher-priced mortgage loans to correspond more accurately to mortgage market conditions and to exclude from the definition some prime loans that might otherwise have been classified as higher-priced. The Board believes that this standard will decrease the economic impact of the proposed rules on small entities by limiting their

compliance costs for prime loans that the Board does not intend to cover under the higher-priced mortgage loan rules. In addition, as noted above, the Board has proposed to provide that creditors may comply with certain disclosure content requirements by using the same amounts determined for purposes of overlapping RESPA disclosure requirements. The Board expects that this approach will minimize compliance burden on small entities by relying on another disclosure requirement with which they already must comply.

The Board welcomes comments on any significant alternatives, consistent with the requirements of TILA, that would minimize the impact of the proposed rules on small entities.

List of Subjects in 12 CFR Part 226

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

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted is set off with bold brackets.

Authority and Issuance

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

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

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

Subpart A—General

2. Section 226.2 is amended by revising paragraph (a)(6) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of § 226.19(a)(1)(ii), § 226.19(a)(2), ►§ 226.19(f)(4), § 226.20(d)(4), ◄ § 226.31, and § 226.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

* * * * *

Subpart C—Closed-End Credit

3. Section 226.19 is amended by revising the heading and adding paragraph (f) to read as follows:

§ 226.19 [Certain mortgage and variable-rate transactions.]►Certain transactions secured by real property or a dwelling.◄

* * * * *

►(f) *Disclosures for escrow accounts.* For a closed-end transaction secured by a first lien on real property or a dwelling, the creditor shall disclose the information about escrow accounts as specified in paragraph (f)(2) of this section in accordance with the format requirements in paragraph (f)(1) of this section and the timing requirements in paragraph (f)(4) of this section. For purposes of this § 226.19(f), the term "escrow account" has the same meaning as under Regulation X (24 CFR 3500.17(b)), which implements the Real Estate Settlement Procedures Act (RESPA), and is subject to any interpretations by the Department of Housing and Urban Development (HUD).

(1) *Format requirements*—(i) *General.* The disclosures required by paragraph (f)(2) of this section shall be provided in a minimum 10-point font, grouped together on the front side of a one-page document, separate from all other material, with the headings, content, order, and format substantially similar to Model Form H–24 in Appendix H to this part, if an escrow account is established, or Model Form H–25 in Appendix H to this part, if an escrow account is not established.

(ii) *Disclosure of heading.* The disclosure of the heading required by paragraph (f)(2)(i) or (ii) of this section shall be more conspicuous than, and shall precede, the other disclosures required by paragraph (f)(2)(i) or (ii) of this section and shall be located outside the table, as required by paragraph (f)(1)(iii) of this section, containing those other disclosures.

(iii) *Form of disclosures; tabular format.* The creditor shall provide the disclosures required by paragraphs (f)(2)(i)(A) through (D) or (f)(2)(ii)(A) through (G) of this section in the form of a table. The table shall contain only the information required or permitted by paragraphs (f)(2)(i)(A) through (D) or (f)(2)(ii)(A) through (G) of this section, as applicable. The table containing the disclosures required by paragraphs (f)(2)(i)(A) through (D) of this section shall consist of four rows while the table containing the disclosures required by paragraphs (f)(2)(ii)(A) through (G) of this section shall consist of no more than seven rows.

(iv) *Question and answer format.* The creditor shall provide the disclosures required by paragraphs (f)(2)(i)(A) through (D) or (f)(2)(ii)(A) through (G) of this section in the format of a question and answer and in the order listed, as applicable.

(v) *Highlighting.* The dollar amounts required to be disclosed in paragraphs (f)(2)(i)(B), (f)(2)(i)(D), and (f)(2)(ii)(D) of this section and the disclosure required by paragraph (f)(2)(ii)(E) of this section shall appear in bold-face font.

(2) *Content requirements*—(i) *Establishment of escrow account.* If an escrow account will be established before the end of the 45-day period following consummation of a transaction subject to this § 226.19(f), the creditor shall clearly and conspicuously disclose, under the heading "Information About Your Mortgage Escrow Account," the following information:

(A) *Purpose of notice.* A statement that the notice is to inform the consumer that the consumer's mortgage with the creditor, which shall be identified by name, will have an escrow account.

(B) *Explanation of escrow account.* A statement that an escrow account is an account that is used to pay home-related costs such as property taxes and insurance together with a statement that an escrow account is sometimes called an "impound" or "trust" account. A statement that the consumer will pay into the escrow account over time and that the creditor will take money from the account to pay costs as needed. A statement of the estimated dollar amount that the consumer's home-related costs will total for the first year of the mortgage.

(C) *Risk of not having escrow account.* A statement that, if the consumer did not have an escrow account, the consumer would be responsible for directly paying home-related costs through potentially large semi-annual or annual payments.

(D) *Funding of escrow account.* A statement of the dollar amount that the consumer will be required to deposit at closing to initially fund the escrow account. A statement of the additional dollar amount that the consumer's regular mortgage payments will include for deposit into the escrow account. A statement that the amount of this escrow payment may change in the future.

(ii) *Non-establishment of escrow account.* If an escrow account will not be established before the end of the 45-day period following consummation of a transaction subject to this § 226.19(f), the creditor shall clearly and conspicuously disclose, under the heading "Required Direct Payment of Property Taxes and Insurance," the following information:

(A) *Purpose of notice.* A statement that the notice is to inform the consumer that the consumer's mortgage with the creditor, which shall be identified by name, will not have an escrow account and to explain the risk of not having an escrow account.

(B) *Explanation of escrow account.* A statement that an escrow account is an account that is used to pay home-related costs such as property taxes and insurance together with a statement that an escrow account is sometimes called an "impound" or "trust" account. A statement that the borrower pays into an escrow account over time and that the creditor takes money from the account to pay costs as needed.

(C) *Reason why mortgage will not have an escrow account.* As applicable, a statement that the consumer was given the option of having an escrow account but the consumer told the creditor that the consumer did not want one, or a statement that the creditor does not offer the option of having an escrow account.

(D) *Fee for choosing not to have escrow account.* If the consumer has chosen not to have an escrow account, a statement of the dollar amount of any fee that the consumer will be charged for choosing not to have an escrow account, or a statement that the consumer will not be charged a fee. If the creditor does not offer the option of having an escrow account, the creditor shall omit this disclosure from the table.

(E) *Risk of not having escrow account.* A statement that the consumer will be responsible for paying home-related costs through potentially large semi-annual or annual payments.

(F) *Consequences of failure to pay home-related costs.* A statement that, if the consumer does not pay the applicable home-related costs, the creditor could require an escrow account on the mortgage or add the costs to the loan balance. A statement that the creditor could also require the consumer to pay for insurance that the creditor buys on the consumer's behalf and a statement that this insurance likely would be more expensive and provide fewer benefits than traditional homeowner's insurance.

(G) *Option to establish escrow account.* The telephone number that the consumer can use to request an escrow account and the latest date by which the consumer can make the request. If the creditor does not offer the option of having an escrow account, the creditor shall omit this disclosure from the table.

(3) *Optional information.* The creditor may, at its option, include the creditor's name or logo, or the consumer's name, property address, or loan number on the disclosure notice required by this § 226.19(f), outside of the table described in § 226.19(f)(1)(iii) that contains the required content of § 226.19(f)(2).

(4) *Waiting period for disclosures.* The creditor shall provide the disclosures required by paragraph (f)(2) of this section so that the consumer receives them no later than three business days before consummation.

(5) *Timing of receipt.* If the disclosures required by paragraph (f)(2) of this section are mailed to the consumer or delivered by means other than in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered.

(6) *Consumer's waiver of waiting period before consummation.* The consumer may modify or waive the three-business-day waiting period required by paragraph (f)(4) of this section, after receiving the disclosures required by paragraph (f)(2) of this section, if the consumer determines that the loan proceeds are needed before the waiting period ends to meet a *bona fide* personal financial emergency. To modify or waive a waiting period, each consumer primarily liable on the obligation shall give the creditor a dated, written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the consumer's signature. Printed forms for this purpose are prohibited.◄

4. Section 226.20 is amended by adding paragraph (d) to read as follows:

§ 226.20 Subsequent disclosure requirements.

* * * * *

►(d) *Cancellation of escrow account.* For a closed-end transaction secured by a first lien on real property or a dwelling for which an escrow account was established and will be cancelled, the creditor or servicer shall disclose the information about escrow accounts as specified in paragraph (d)(2) of this section in accordance with the format requirements in paragraph (d)(1) of this section and the timing requirements in paragraph (d)(4) of this section. For purposes of this § 226.20(d), the term "escrow account" and the term "servicer" have the same respective meanings as under §§ 3500.17(b) and 3500.2(b) of Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA), and is subject to any interpretations by the Department of Housing and Urban Development (HUD).

(1) *Format requirements*—(i) *General.* The disclosures required by paragraph (d)(2) of this section shall be provided in a minimum 10-point font, grouped together on the front side of a one-page document, separate from all other material, with the headings, content, order, and format substantially similar to Model Form H–26 in Appendix H to this part.

(ii) *Disclosure of heading.* The disclosure of the heading required by paragraph (d)(2) of this section shall be more conspicuous than, and shall precede, the other disclosures required by paragraph (d)(2) of this section and shall be located outside the table, as required by paragraph (d)(1)(iii) of this section, containing those other disclosures.

(iii) *Form of disclosures; tabular format.* The creditor or servicer shall provide the disclosures required by paragraphs (d)(2)(i) through (vii) of this section in the form of a table. The table shall contain only the information required or permitted by paragraphs (d)(2)(i) through (vii) of this section and shall consist of no more than seven rows.

(iv) *Question and answer format.* The creditor or servicer shall provide the disclosures required by paragraphs (d)(2)(i) through (vii) of this section in the format of a question and answer and in the order listed.

(v) *Highlighting.* The dollar amount required to be disclosed in paragraph (d)(2)(iv) of this section and the disclosure required by paragraph (d)(2)(v) of this section shall appear in bold-face font.

(2) *Content requirements.* If an escrow account was established in connection with consummation of a transaction subject to this § 226.20(d) and the escrow account will be cancelled, the creditor or servicer shall clearly and conspicuously disclose, under the heading "Required Direct Payment of Property Taxes and Insurance," the following information:

(i) *Purpose of notice.* A statement that the notice is to inform the consumer that the escrow account on the consumer's mortgage with the creditor or servicer, which shall be identified by name, is being closed and to explain the risk of not having an escrow account.

(ii) *Explanation of escrow account.* A statement that an escrow account is an account that is used to pay home-related costs such as property taxes and

insurance together with a statement that an escrow account is sometimes called an "impound" or "trust" account. A statement that the consumer pays into an escrow account over time and that the creditor or the servicer takes money from the account to pay costs as needed.

(iii) *Reason why mortgage will not have an escrow account.* A statement that the consumer had an escrow account but, as applicable, the consumer asked to close it or the creditor or servicer independently decided to cancel it.

(iv) *Fee for closing escrow account.* If the consumer has asked the creditor or servicer to close the escrow account, a statement of the dollar amount of any fee that the consumer will be charged in connection with the closure, or a statement that the consumer will not be charged a fee. If the creditor or servicer independently decided to cancel the escrow account, rather than agreeing to close it at the request of the consumer, and does not charge a fee in connection with the cancellation, the creditor or servicer shall omit this disclosure from the table.

(v) *Risk of not having escrow account.* A statement that the consumer will be responsible for paying home-related costs through potentially large semi-annual or annual payments.

(vi) *Consequences of failure to pay home-related costs.* A statement that, if the consumer does not pay the applicable home-related costs, the creditor or servicer could require an escrow account on the mortgage or add the costs to the loan balance. A statement that the creditor or servicer could also require the consumer to pay for insurance that the creditor or servicer buys on the consumer's behalf and a statement that this insurance likely would be more expensive and provide fewer benefits than traditional homeowner's insurance.

(vii) *Option to keep escrow account.* As applicable, the telephone number that the consumer can use to request that the escrow account be kept open and the latest date by which the consumer can make the request, or a statement that the creditor or servicer does not offer the option of keeping the escrow account.

(3) *Optional information.* The creditor or servicer providing the disclosure notice may, at its option, include its name or logo, or the consumer's name, property address, or loan number on the disclosure notice required by this § 226.20(d), outside of the table described in § 226.20(d)(1)(iii) that contains the required content of § 226.20(d)(2).

(4) *Waiting period for disclosures.* The creditor or servicer shall provide the disclosures required by paragraph (d)(2) of this section so that the consumer receives them no later than three business days before closure of the escrow account.

(5) *Timing of receipt.* If the disclosures required by paragraph (d)(2) of this section are mailed to the consumer or delivered by means other than in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered.◄

Subpart E—Special Rules for Certain Home Mortgage Transactions

5. Section 226.34 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 226.34 Prohibited acts or practices in connection with credit subject to § 226.32.

(a) * * *

(4) * * *

(i) *Mortgage-related obligations.* For purposes of this paragraph (a)(4), mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor as set forth in ►§ 226.45(b)(1),◄ [§ 226.35(b)(3)(i),] and similar expenses.

* * * * *

6. Section 226.35 is amended by revising paragraph (b)(3) to read as follows:

§ 226.35 Prohibited acts or practices in connection with higher-priced mortgage loans.

* * * * *

(b) * * *

(3) ►[Reserved]◄ [*Escrows*—(i) *Failure to escrow for property taxes and insurance.* Except as provided in paragraph (b)(3)(ii) of this section, a creditor may not extend a loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.

(ii) *Exemptions for loans secured by shares in a cooperative and for certain condominium units*—(A) Escrow accounts need not be established for loans secured by shares in a cooperative; and

(B) Insurance premiums described in paragraph (b)(3)(i) of this section need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.

(iii) *Cancellation.* A creditor or servicer may permit a consumer to cancel the escrow account required in paragraph (b)(3)(i) of this section only in response to a consumer's dated written request to cancel the escrow account that is received no earlier than 365 days after consummation.

(iv) *Definition of escrow account.* For purposes of this section, "escrow account" shall have the same meaning as in 24 CFR 3500.17(b) as amended.]

* * * * *

7. Section 226.45 is added to read as follows:

►§ 226.45 Escrow requirements for higher-priced mortgage loans.

(a) *Higher-priced mortgage loans*—(1) For purposes of this section, except as provided in paragraph (a)(3) of this section, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling that has a transaction coverage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

(i) By 1.5 or more percentage points for a loan secured by a first lien on a dwelling, except as provided in paragraph (a)(1)(ii) of this section;

(ii) By 2.5 or more percentage points for a loan secured by a first lien on a dwelling, if the principal balance at consummation exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or

(iii) By 3.5 or more percentage points for a loan secured by a subordinate lien on a dwelling.

(2) *Definitions*—(i) "Transaction coverage rate" means the rate used to determine whether a transaction is a higher-priced mortgage loan subject to this section. The transaction coverage rate is determined in accordance with the applicable rules of this part for the calculation of the annual percentage rate for a closed-end transaction, except that the prepaid finance charge for purposes of calculating the transaction coverage rate shall include only the amount of the prepaid finance charge that will be retained by the creditor, a mortgage broker, or an affiliate of either.

(ii) "Average prime offer rate" means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage

transactions that have low-risk pricing characteristics. The Board publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Board uses to derive these rates.

(3) Notwithstanding paragraph (a)(1) of this section, the term "higher-priced mortgage loan" does not include a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months, a reverse-mortgage transaction subject to § 226.33, or a home equity line of credit subject to § 226.5b.

(b) *Escrow accounts*—(1) *Requirement to escrow for property taxes and insurance.* Except as provided in paragraph (b)(2) of this section, a creditor may not extend a higher-priced mortgage loan secured by a first lien on a consumer's principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. For purposes of this § 226.45(b), the term "escrow account" has the same meaning as under Regulation X (24 CFR 3500.17(b)), which implements the Real Estate Settlement Procedures Act (RESPA), and is subject to any interpretations by the Department of Housing and Urban Development (HUD).

(2) *Exemptions*—(i) Escrow accounts need not be established for loans secured by shares in a cooperative.

(ii) Insurance premiums described in paragraph (b)(1) of this section need not be included in escrow accounts for loans secured by dwellings in condominiums, planned unit developments, or similar arrangements in which dwelling ownership requires participation in a governing association, where the governing association has an obligation to the dwelling owners to maintain a master policy insuring all dwellings.

(iii) Except as provided in paragraph (b)(2)(v) of this section, paragraph (b)(1) of this section does not apply to a transaction if, at the time of consummation:

(A) During the preceding calendar year, the creditor extended more than 50% of its total first-lien higher-priced mortgage loans in counties designated by the Board as "rural or underserved" under paragraph (b)(2)(iv) of this section;

(B) During either of the preceding two calendar years, the creditor and its affiliates together originated and retained the servicing rights to 100 or fewer loans secured by a first lien on real property or a dwelling; and

(C) Neither the creditor nor its affiliate maintains an escrow account of the type described in paragraph (b)(1) of this section for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services.

(iv) For purposes of paragraph (b)(2)(iii)(A) of this section:

(A) A county is "rural" during a calendar year if it is not in a metropolitan statistical area or a micropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget, and:

(*1*) it is not adjacent to any metropolitan area or micropolitan area; or

(*2*) it is adjacent to a metropolitan area with fewer than one million residents or adjacent to a micropolitan area, and it contains no town with 2500 or more residents.

(B) A county is "underserved" during a calendar year if no more than two creditors extend consumer credit five or more times secured by a first lien on real property or a dwelling during the calendar year in the county.

(v) Notwithstanding paragraph (b)(2)(iii) of this section, the requirement to establish an escrow account in paragraph (b)(1) of this section applies to a first-lien higher-priced mortgage loan that, at consummation, is subject to a commitment to be acquired by a person that does not satisfy the conditions in paragraph (b)(2)(iii) of this section.

(3) *Cancellation*—(i) *General.* Except as provided in paragraph (b)(3)(ii) of this section, a creditor or servicer may cancel an escrow account required in paragraph (b)(1) of this section only upon the earlier of:

(A) Termination of the underlying debt obligation; or

(B) Receipt no earlier than five years after consummation of a consumer's request to cancel the escrow account.

(ii) *Delayed cancellation.* A creditor or servicer shall not cancel an escrow account pursuant to a consumer's request described in paragraph (b)(3)(i)(B) of this section unless the following conditions are satisfied:

(A) At least 20% of the original value of the property securing the underlying debt obligation is unencumbered; and

(B) The consumer currently is not delinquent or in default on the underlying debt obligation.

(c) [Reserved]

(d) *Evasion; open-end credit.* In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in § 226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.◄

8. Appendix H to part 226 is amended by:

A. Adding entries for H–24, H–25, and H–26 in the table of contents at the beginning of the appendix; and

B. Adding new Model Forms H–24, H–25, and H–26 in numerical order.

Appendix H to Part 226—Closed-End Model Forms and Clauses

►H–24—Establishment of Escrow Account Model Form (§ 226.19(f)(2)(i))

H–25—Non-Establishment of Escrow Account Model Form (§ 226.19(f)(2)(ii))

H–26—Cancellation of Escrow Account Model Form (§ 226.20(d))◄

* * * * *

►H–24—Establishment of Escrow Account Model Form (§ 226.19(f)(2)(i))

BILLING CODE 6210–01–P

Information About Your Mortgage Escrow Account

What is the purpose of this notice?	This notice is to inform you that your mortgage with (Creditor's Name) will have an escrow account.

What is an escrow account?	An escrow account (sometimes called an "impound" or "trust" account) is an account that is used to pay home-related costs such as property taxes and insurance. You will pay into the escrow account over time, and we will take money from the account to pay costs as needed. We estimate that your home-related costs will total **$_____** for the first year of your mortgage.
What would be the risk of not having an escrow account?	If you did not have an escrow account, you would be responsible for directly paying your home-related costs through potentially large semi-annual or annual payments.
How will I pay into my escrow account?	At closing you will make an initial deposit of **$_____** into your escrow account. After that, your regular mortgage payments will include an additional **$_____** that will be deposited into your escrow account. The amount of this escrow payment may change in the future.

H-25—Non-Establishment of Escrow Account Model Form (§ 226.19(f)(2)(ii))

Required Direct Payment of Property Taxes and Insurance

What is the purpose of this notice?	This notice is to inform you that your mortgage with (Creditor's Name) will not have an escrow account. It also describes the risk of not having an escrow account.

What is an escrow account?	An escrow account (sometimes called an "impound" or "trust" account) is an account that is used to pay home-related costs such as property taxes and insurance. A borrower pays into the escrow account over time, and the creditor takes money from the account to pay costs as needed.
Why won't my mortgage have an escrow account?	[You were given the option of having an escrow account, but you told us that you didn't want one.][We do not offer the option of having an escrow account.]
[Will I be charged a fee for choosing not to have an escrow account?	[Yes. For choosing not to have an escrow account, you will be charged a fee of $_____.][No.]]
What is the risk of not having an escrow account?	**You will be responsible for directly paying your home-related costs through potentially large semi-annual or annual payments.**
What could happen if I don't pay my home-related costs?	If you don't pay these costs, we could require an escrow account on your mortgage or add the costs to your loan balance. We could also require that you pay for insurance that we buy on your behalf. This insurance likely would be more expensive and provide fewer benefits than traditional homeowner's insurance.
[Can I set up an escrow account on my mortgage?	Yes. If you want to set up an escrow account on your mortgage, contact us at (telephone number) by (date).]

H-26—Cancellation of Escrow Account Model Form (§ 226.20(d))

Required Direct Payment of Property Taxes and Insurance

What is the purpose of this notice?	This notice is to inform you that the escrow account on your mortgage with (Creditor's or Servicer's Name) is being closed. It also describes the risk of not having an escrow account.

What is an escrow account?	An escrow account (sometimes called an "impound" or "trust" account) is an account that is used to pay home-related costs such as property taxes and insurance. You pay into the escrow account over time, and we take money from the account to pay costs as needed.
Why won't my mortgage have an escrow account?	You had an escrow account, but [you asked us to close][we are cancelling] it.
[Will I be charged a fee for closing my escrow account?	[Yes. For closing your escrow account, you will be charged a fee of **$**____.][No.]]
What is the risk of not having an escrow account?	**You will be responsible for directly paying your home-related costs through potentially large semi-annual or annual payments.**
What could happen if I don't pay my home-related costs?	If you don't pay these costs, we could require an escrow account on your mortgage or add the costs to your loan balance. We could also require that you pay for insurance that we buy on your behalf. This insurance likely would be more expensive and provide fewer benefits than traditional homeowner's insurance.
Can I keep the escrow account on my mortgage?	[Yes. If you want to keep the escrow account on your mortgage, contact us at (telephone number) by (date).][No, we do not offer that option.]

◄

BILLING CODE 6210–01–C

9. In Supplement I to Part 226:

A. Under *Section 226.2—Definitions and Rules of Construction, 2(a) Definitions, 2(a)(6) Business day,* paragraph 2 is revised.

B. Under *Section 226.19—Certain Mortgage and Variable-Rate Transactions,* the heading is revised and *19(f) Disclosures for escrow accounts* is added.

C. Under *Section 226.20—Subsequent Disclosure Requirements,* new *20(d) Cancellation of escrow account* is added.

D. Under *Section 226.34—Prohibited Acts or Practices in Connection with Credit Subject to § 226.32, 34(a) Prohibited acts or practices for loans subject to § 226.32, 34(a)(4) Repayment*

ability, 34(a)(4)(i) Mortgage-related obligation, paragraph 1 is revised.

E. Under *Section 226.35—Prohibited Acts or Practices in Connection With Higher-Priced Mortgage Loans, 35(b) Rules for higher-priced mortgage loans,* the heading 35(b)(3) *Escrows,* the heading *Paragraph 35(b)(3)(i)* and paragraphs 1 through 3 thereunder, the heading *Paragraph 35(b)(3)(ii)(B)* and paragraph 1 thereunder, and the heading 35(b)(3)(v) "*Jumbo*" *loans* and paragraphs 1 and 2 thereunder are removed.

F. New *Section 226.45—Requirements for Higher-Priced Mortgage Loans* is added.

G. Under Appendices G and H—Open-End and Closed-End Model Forms and Clauses, paragraph 1 is revised.

H. Under Appendix H—Closed-End Model Forms and Clauses, new paragraph 29 is added.

The revisions and additions read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

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Section 226.2—Definitions and Rules of Construction

* * * * *

2(a) Definitions.

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2(a)(6) Business day.

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2. *Rule for rescission, disclosures for certain mortgage transactions, and private education loans.* A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain [dwelling-secured] mortgage transactions under §§ 226.19(a)(1)(ii), 226.19(a)(2), ►226.19(f)(4), 226.20(d)(4),◄ 226.31(c), or the receipt of disclosures for private education loans under § 226.46(d)(4) is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

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Subpart C—Closed-End Credit

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Section 226.19—[Certain Mortgage and Variable-Rate Transactions]►Certain Transactions Secured by Real Property or a Dwelling◄

* * * * *

►*19(f) Disclosures for escrow accounts.*

1. *Real property or a dwelling.* The term "real property" includes vacant and unimproved land. The term "dwelling" includes vacation and second homes and mobile homes, boats, and trailers used as residences. *See* § 226.2(a)(19) and related commentary for additional guidance regarding the term "dwelling."

19(f)(1) Format requirements.

19(f)(1)(i) General.

1. *Grouped and separate.* The disclosures required by § 226.19(f)(2) and any optional information permitted by § 226.19(f)(3) must be grouped together on the front side of a separate one-page document that contains no other material. The § 226.19(f)(2)(i) disclosures may not appear in the same document as the escrow disclosures required under § 226.18 or under RESPA or Regulation X.

2. *Notice must be in writing in a form that the consumer may keep.* The notice containing the disclosures required by § 226.19(f)(2) and any optional information permitted by § 226.19(f)(3) must be in writing in a form that the consumer may keep. *See* § 226.17(a).

19(f)(2) Content requirements.

1. *Clear and conspicuous standard.* The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer.

19(f)(2)(i) Establishment of escrow account.

1. *Reliance on Regulation X escrow account analysis.* Regulation X, 24 CFR 3500.17(c)(2), requires the mortgage servicer to conduct an escrow account analysis before establishing an escrow account. Disclosures comply with the numerical content requirements of § 226.19(f)(2)(i)(B) and (D) if the creditor uses the amounts derived from the escrow account analysis to provide the total dollar amount of estimated taxes and insurance for the initial year following consummation, the dollar amount for the initial escrow deposit at closing, and the additional dollar amount for escrow included in the regular mortgage payments.

2. *Escrow accounts established in connection with consumer's delinquency or default.* Neither creditors nor servicers are required to provide the § 226.19(f)(2)(i) disclosures when an escrow account is established solely in connection with the consumer's delinquency or default on the underlying debt obligation.

19(f)(3) Optional information.

1. Section 226.19(f)(3) lists information that the creditor may, at its option, include on the disclosure notice outside of the table that is required by § 226.19(f)(1)(iii).

19(f)(4) Waiting period for disclosures.

1. *Business day definition.* For purposes of § 226.19(f)(4), "business day" means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 2(a)(6)–2.

2. *Timing.* The creditor must provide the disclosures required by § 226.19(f)(2) so that the consumer receives them not later than the third business day before consummation. For example, for consummation to occur on Thursday, June 11, the consumer must receive the disclosures on or before Monday, June 8, assuming there are no legal public holidays.

19(f)(5) Timing of receipt.

1. *General.* If the creditor delivers the disclosures required by § 226.19(f)(2) to the consumer in person, consummation may occur any time on the third business day following the day of delivery. If the creditor provides the disclosures required by § 226.19(f)(2) by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 226.19(f)(4) begins. Creditors that use electronic mail or a courier to provide disclosures may also follow this approach. Whatever method is used to provide disclosures, creditors may rely on documentation of receipt in determining when the three-business-day waiting period begins.

19(f)(6) Consumer's waiver of waiting period before consummation.

1. *Procedure.* A consumer may modify or waive the right to a waiting period required by § 226.19(f)(4) only after the consumer receives the disclosures required by § 226.19(f)(2). After receiving the required disclosures, the consumer may waive or modify the waiting period by giving the creditor a dated, written statement that specifically waives or modifies the waiting period and describes the bona fide personal financial emergency. A waiver is effective only if each consumer primarily liable on the legal obligation signs a waiver statement. Where there are multiple such consumers, the consumers may, but need not, sign the same waiver statement. The consumer may, but need not, include the waiver statement that specifically waives or modifies the three-business-day waiting period required by § 226.19(f)(4) in the same document that contains a waiver statement that specifically waives or modifies the seven-business-day waiting period for early disclosures or the three-business-day waiting period for corrected disclosures required by § 226.19(a)(2).

2. *Bona fide personal financial emergency.* To modify or waive the waiting period required by § 226.19(f)(4), there must be a *bona fide* personal financial emergency that requires disbursement of loan proceeds before the end of the waiting period. Whether there is a *bona fide* personal financial emergency is determined by the facts surrounding individual circumstances. A *bona fide* personal financial emergency typically, but not always, will involve imminent loss of or harm to a dwelling or harm to the health or safety of a natural person. A waiver is not effective if the consumer's statement is inconsistent with facts known to the creditor.◄

Section 226.20—Subsequent Disclosure Requirements

* * * * *

►*20(d) Cancellation of escrow account.*

1. *Real property or a dwelling.* The term "real property" includes vacant and unimproved land. The term "dwelling" includes vacation and second homes and mobile homes, boats, and trailers used as residences. *See* § 226.2(a)(19) and related commentary for additional guidance regarding the term "dwelling."

20(d)(1) Format requirements.

20(d)(1)(i) General.

1. *Grouped and separate.* The disclosures required by § 226.20(d)(2) and any optional information permitted by § 226.20(d)(3) must be grouped together on the front side of a separate one-page document that contains no other material.

2. *Notice must be in writing in a form that the consumer may keep.* The notice containing the disclosures required by § 226.20(d)(2) and any optional information permitted by § 226.20(d)(3) must be in writing in a form that the consumer may keep. *See* § 226.17(a).

20(d)(2) Content requirements.

1. *Clear and conspicuous standard.* The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer.

2. *Escrow account established in connection with consumer's delinquency or default.* Neither creditors nor servicers are required to provide the § 226.20(d)(2) disclosures when an escrow account that was established solely in connection with the consumer's delinquency or default on the underlying debt obligation will be cancelled.

3. *Termination of underlying debt obligation.* Neither creditors nor servicers are required to provide the § 226.20(d)(2) disclosures when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure.

20(d)(3) Optional information.

1. Section 226.20(d)(3) lists information that the creditor or servicer may, at its option, include on the disclosure notice outside of the table that is required by § 226.20(d)(1)(iii).

20(d)(4) Waiting period for disclosures.

1. *Business day definition.* For purposes of § 226.20(d)(4), "business day" means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). See comment 2(a)(6)–2.

2. *Timing.* The creditor or servicer must provide the disclosures required by § 226.20(d)(2) so that the consumer receives them not later than the third business day before consummation. For example, for consummation to occur on Thursday, June 11, the consumer must receive the disclosures on or before Monday, June 8, assuming there are no legal public holidays.

20(d)(5) Timing of receipt.

1. *General.* If the creditor or servicer delivers the disclosures required by § 226.20(d)(2) to the consumer in person, the escrow account may be closed any time on the third business day following the date of delivery. If the creditor or servicer provides the disclosures required by § 226.20(d)(2) by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 226.20(d)(4) begins. Creditors and servicers that use electronic mail or a courier to provide disclosures may also follow this approach. Whatever method is used to provide disclosures, creditors and servicers may rely on documentation of receipt in determining when the three-business-day waiting period begins.◄

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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34(a)(4)(i) Mortgage-related obligations.

1. *Mortgage-related obligations.* A creditor must include in its repayment ability analysis the expected property taxes and premiums for mortgage-related insurance required by the creditor as set forth in ►§ 226.45(b)(1),◄ [§ 226.35(b)(3)(i),] as well as similar mortgage-related expenses. Similar mortgage-related expenses include homeowners' association dues and condominium or cooperative fees.

* * * * *

[*35(b)(3) Escrows.*

Paragraph 35(b)(3)(i).

1. Section 226.35(b)(3) applies to principal dwellings, including structures that are classified as personal property under state law. For example, an escrow account must be established on a higher-priced mortgage loan secured by a first lien on a mobile home, boat or a trailer used as the consumer's principal dwelling. See the commentary under §§ 226.2(a)(19), 226.2(a)(24), 226.15 and 226.23. Section 226.35(b)(3) also applies to higher-priced mortgage loans secured by a first lien on a condominium or a cooperative unit if it is in fact used as principal residence.

2. *Administration of escrow accounts.* Section 226.35(b)(3) requires creditors to establish before the consummation of a loan secured by a first lien on a principal dwelling an escrow account for payment of property taxes and premiums for mortgage-related insurance required by creditor. Section 6 of RESPA, 12 U.S.C. 2605, and Regulation X address how escrow accounts must be administered.

3. *Optional insurance items.* Section 226.35(b)(3) does not require that escrow accounts be established for premiums for mortgage-related insurance that the creditor does not require in connection with the credit transaction, such as an earthquake insurance or debt-protection insurance.

Paragraph 35(b)(3)(ii)(B).

1. *Limited exception.* A creditor is required to escrow for payment of property taxes for all first lien loans secured by condominium units regardless of whether the creditors escrows insurance premiums for condominium unit.]

* * * * *

►*Section 226.45—Requirements for Higher-Priced Mortgage Loans*

45(a) Higher-priced mortgage loans.

Paragraph 45(a)(1).

1. *Threshold for "jumbo" loans.* Section 226.45(a)(1)(ii) provides a separate threshold for determining whether a transaction is a higher-priced mortgage loan subject to § 226.45 when the principal balance exceeds the limit in effect as of the date the transaction's rate is set for the maximum principal obligation eligible for purchase by Freddie Mac (a "jumbo" loan). The Federal Housing Finance Agency (FHFA) establishes and adjusts the maximum principal obligation pursuant to rules under 12 U.S.C. 1454(a)(2) and other provisions of federal law. Adjustments to the maximum principal obligation made by FHFA apply in determining whether a mortgage loan is a "jumbo" loan to which the separate coverage threshold in § 226.45(a)(1)(ii) applies.

45(a)(2) Definitions.

Paragraph 45(a)(2)(i).

1. *Transaction coverage rate.* The transaction coverage rate is calculated solely for purposes of determining whether a transaction is subject to § 226.45. The creditor is not required to disclose the transaction coverage rate to the consumer. The creditor determines the transaction coverage rate in the same manner as the transaction's annual percentage rate, except that, for purposes of calculating the transaction coverage rate and determining coverage under § 226.45, the amount of the prepaid finance charge is modified in accordance with § 226.45(a)(2)(i). Under § 226.45(a)(2)(i), only the amount of the prepaid finance charge retained by the creditor, a mortgage broker, or an affiliate of either is included in calculating the transaction coverage rate; any other fees or charges included in the prepaid finance charge for purposes of calculating the annual percentage rate are disregarded. For example, assume a transaction in which, at consummation, one discount point is paid to the creditor, an underwriting fee is paid to an affiliate of the creditor, an origination fee is paid to a mortgage broker, and a mortgage insurance premium is paid to a mortgage insurer that is not affiliated with the creditor or the mortgage broker. For purposes of the annual percentage rate disclosed to the consumer, all of the listed charges are included in the prepaid finance charge; for purposes of calculating the transaction coverage rate, however, the mortgage insurance premium is excluded from the modified prepaid finance charge. The transaction coverage rate that results from these special rules must be compared to the average prime offer rate to determine whether the transaction is subject to § 226.45.

2. *Inclusion of finance charges in modified prepaid finance charge; mortgage broker charges.* For purposes of the special rules under § 226.45(a)(2)(i), only charges that are included in the prepaid finance charge to calculate the annual percentage rate are included in the modified prepaid finance charge to calculate the transaction coverage rate. Compensation paid by the creditor to a mortgage broker that comes from a "yield spread premium" is not included in the modified prepaid finance charge because such compensation is not a prepaid finance charge. See comment 4(a)(3)–3.

Paragraph 45(a)(2)(ii).

1. *Average prime offer rate.* Average prime offer rates are annual percentage rates

derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. Other pricing terms include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics include a consumer's credit history and transaction characteristics such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. To obtain average prime offer rates, the Board uses a survey of creditors that both meets the criteria of § 226.45(a)(2)(ii) and provides pricing terms for at least two types of variable-rate transactions and at least two types of non-variable-rate transactions. An example of such a survey is the Freddie Mac Primary Mortgage Market Survey®.

2. *Comparable transaction.* A higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with a transaction coverage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by the specified amount. The table of average prime offer rates published by the Board indicates how to identify the comparable transaction.

3. *Rate set.* A transaction's transaction coverage rate is compared to the average prime offer rate as of the date the transaction's interest rate is set (or "locked") before consummation. Sometimes a creditor sets the interest rate initially and then re-sets it at a different level before consummation. The creditor should use the last date the interest rate is set before consummation.

4. *Board table.* The Board publishes on the FFIEC's Web site, in table form, average prime offer rates for a wide variety of transaction types. *See http://www.ffiec.gov/hmda.* The Board calculates an annual percentage rate, consistent with Regulation Z (see § 226.22 and appendix J), for each transaction type for which pricing terms are available from a survey. The Board estimates annual percentage rates for other types of transactions for which direct survey data are not available based on the loan pricing terms available in the survey and other information. The Board publishes on the FFIEC's Web site the methodology it uses to arrive at these estimates.

5. *Additional guidance on determination of average prime offer rates.* The average prime offer rate has the same meaning in § 226.45 as in Regulation C, 12 CFR part 203. *See* 12 CFR 203.4(a)(12)(ii). Guidance on the average prime offer rate under § 226.45(a)(2)(ii), such as when a transaction's rate is set and determination of the comparable transaction, is provided in the staff commentary under Regulation C, the Board's *A Guide to HMDA Reporting: Getting it Right!,* and the relevant "Frequently Asked Questions" on Home Mortgage Disclosure Act (HMDA) compliance posted on the FFIEC's Web site at *http://www.ffiec.gov/hmda.*

Paragraph 45(a)(3).

1. *Construction-permanent loans.* Under § 226.45(a)(3), § 226.45 does not apply to a transaction to finance the initial construction of a dwelling. Section 226.45 may apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor. When a construction loan may be permanently financed by the same creditor, § 226.17(c)(6)(ii) permits the creditor to give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. *See also* comment 17(c)(6)–2. Section 226.17(c)(6)(ii) addresses only how a creditor may elect to disclose a construction-permanent transaction. Which disclosure option a creditor elects under § 226.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to § 226.45. Whether the creditor discloses the two phases as a single transaction or as two separate transactions, a single transaction coverage rate, reflecting the appropriate charges from both phases, must be calculated in accordance with § 226.45(a)(2)(i). The transaction coverage rate must be compared to the average prime offer rate for a comparable transaction to determine coverage under § 226.45. If the transaction is determined to be a higher-priced mortgage loan, only the permanent phase is subject to the requirements of § 226.45. Thus, for example, the requirement under § 226.45(b) to establish an escrow account prior to consummation of a higher-priced mortgage loan secured by a first lien on a principal dwelling applies only to the permanent phase and not to the construction phase. Accordingly, the escrow account must be established by the time the transaction converts from the construction phase to the permanent phase, even though the permanent phase may have been consummated earlier, and the period for which the escrow account must remain in place under § 226.45(b)(3) is measured from the time the conversion to the permanent phase occurs.

45(b) Escrow accounts.

45(b)(1) Requirement to escrow for property taxes and insurance.

1. *Principal dwelling.* Section 226.45(b)(1) applies to principal dwellings, including structures that are classified as personal property under state law. For example, an escrow account must be established on a higher-priced mortgage loan secured by a first lien on a mobile home, boat, or trailer used as the consumer's principal dwelling. *See* the commentary under §§ 226.2(a)(19), 226.2(a)(24), 226.15 and 226.23. Section 226.45(b)(1) also applies to a higher-priced mortgage loan secured by a first lien on a condominium or a cooperative unit if it is in fact used as the consumer's principal dwelling. *But see* § 226.45(b)(2) for exemptions from the escrow requirement that may apply to such transactions.

2. *Administration of escrow accounts.* Section 226.45(b)(1) requires creditors to establish an escrow account for payment of property taxes and premiums for mortgage-related insurance required by the creditor before the consummation of a higher-priced mortgage loan secured by a first lien on a principal dwelling. Section 6 of RESPA, 12 U.S.C. 2605, and Regulation X address how escrow accounts must be administered.

3. *Optional insurance items.* Section 226.45(b)(1) does not require that an escrow account be established for premiums for mortgage-related insurance that the creditor does not require in connection with the credit transaction, such as earthquake insurance or credit life insurance.

4. *Transactions not subject to § 226.45(b)(1).* Section 226.45(b)(1) requires a creditor to establish an escrow account before consummation of a first-lien higher-priced mortgage loan. This requirement does not affect a creditor's right or obligation, pursuant to the terms of the legal obligation or applicable law, to offer or require an escrow account for a transaction that is not subject to § 226.45(b)(1).

45(b)(2) Exemptions.

Paragraph 45(b)(2)(ii).

1. *Limited exception.* A creditor is required to escrow for payment of property taxes for all first-lien higher-priced mortgage loans secured by condominium, planned unit development, or similar dwellings or units regardless of whether the creditor escrows insurance premiums for such dwellings or units.

2. *Planned unit developments.* Planned unit developments (PUDs) are a form of property ownership often used in retirement communities, golf communities, and similar communities made up of homes located within a defined geographical area. PUDs usually have a homeowners' association, or some other governing association, analogous to a condominium association and with similar authority and obligations. Thus, as with condominiums, PUDs often have master insurance policies that cover all units in the PUD. Under § 226.45(b)(2)(ii), if a PUD's governing association is obligated to maintain such a master insurance policy, an escrow account required by § 226.35(b)(1) for a transaction secured by a unit in the PUD need not include escrows for insurance. This exemption applies not only to condominiums and PUDs but also to any other type of property ownership arrangement that has a governing association with an obligation to maintain a master insurance policy.

Paragraph 45(b)(2)(iii).

1. *Requirements for exemption.* Under § 226.45(b)(2)(iii), except as provided in § 226.45(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following three conditions are satisfied when the higher-priced mortgage loan is consummated:

i. The creditor extended over 50% of its total first-lien higher-priced mortgage loans during the preceding calendar year in counties that are "rural or underserved," as defined in § 226.45(b)(2)(iv). Pursuant to that section, the Board determines annually which counties in the United States are rural or underserved and publishes a list of those counties to enable creditors to determine whether they meet this condition for the exemption. Thus, for example, if a creditor originated 90 first-lien higher-priced mortgage loans during 2010, the creditor meets this condition for an exemption in 2011 if at least 46 of those loans are secured

by properties located in one or more counties that are on the Board's list for 2010.

ii. The creditor and its affiliates together extended and serviced 100 or fewer first-lien mortgage loans during either of the preceding two calendar years. Thus, a creditor becomes ineligible for the exemption if it exceeds the threshold for two consecutive calendar years. For example, if a creditor extends and retains the servicing rights to 100 first-lien mortgage loans in 2008 and then 110 in each of 2009 and 2010, the creditor must comply with § 226.45(b)(1) beginning in 2011. On the other hand, if the same creditor extended and retained the servicing rights to only 100 first-lien mortgage loans in 2010, it would remain eligible for the exemption in 2011 notwithstanding its 110 originations in 2009, assuming it continues to satisfy the other conditions of § 226.45(b)(2)(iii).

iii. The creditor, or its affiliate, does not maintain an escrow account for any mortgage loan being serviced by the creditor or its affiliate at the time the transaction is consummated. Thus, the exemption applies, provided the other conditions of § 226.45(b)(2)(iii) are satisfied, even if the creditor previously maintained escrow accounts for mortgage loans, provided it no longer maintains any such accounts. Once a creditor or its affiliate begins escrowing for loans currently serviced, however, the creditor and its affiliate become ineligible for the exemption in § 226.45(b)(2)(iii) on higher-priced mortgage loans they make thereafter. Thus, as long as a creditor (or its affiliate) services and maintains escrow accounts for any mortgage loans, the creditor will not be eligible for the exemption for any higher-priced mortgage loan it may make. For purposes of § 226.45(b)(2)(iii), a creditor or its affiliate "maintains" an escrow account only if it services a mortgage loan for which an escrow account has been established at least through the due date of the second periodic payment under the terms of the legal obligation.

Paragraph 45(b)(2)(iv).

1. *Requirements for "rural or underserved" status.* A county is considered "rural or underserved" for purposes of § 226.45(b)(2)(iii)(A) if it satisfies either of the two tests in § 226.45(b)(2)(iv). The Board applies both tests to each county in the United States and, if a county satisfies either test, includes that county on the annual list of "rural or underserved" counties. The Board publishes on its public Web site the applicable list for each calendar year by the end of that year. A creditor's first-lien higher-priced mortgage loan originations in such counties during that year are considered for purposes of whether the creditor satisfies the condition in § 226.45(b)(2)(iii)(A) and therefore is eligible for the exemption during the following calendar year. The Board determines whether each county is "rural" by reference to the currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS). Specifically, the Board classifies a county as "rural" if the USDA–ERS categorizes the county under UIC 7, 10, 11, or 12. The Board determines whether each county is "underserved" by reference to data submitted by mortgage lenders under the Home Mortgage Disclosure Act (HMDA).

Paragraph 45(b)(2)(v).

1. *Forward commitments.* A creditor may make a mortgage loan that will be transferred or sold to a purchaser pursuant to an agreement that has been entered into at or before the time the loan is consummated. Such an agreement is sometimes known as a "forward commitment." A first-lien higher-priced mortgage loan that will be acquired by a purchaser pursuant to a forward commitment is subject to the requirement to establish an escrow account under § 226.45(b)(1) unless the purchaser is eligible for the exemption in § 226.45(b)(2)(iii). The escrow requirement applies to any such transaction, whether the forward commitment provides for the purchase and sale of the specific transaction or for the purchase and sale of loans with certain prescribed criteria that the transaction meets. For example, assume a creditor that qualifies for the exemption in § 226.45(b)(2)(iii) makes a higher-priced mortgage loan that meets the purchase criteria of an investor with which the creditor has an agreement to sell such loans after consummation. If the investor currently escrows for any mortgage loans it services, making the investor ineligible for the exemption in § 226.45(b)(2)(iii), an escrow account must be established for the transaction before consummation in accordance with § 226.45(b)(1).

45(b)(3) Cancellation.

1. *Termination of underlying debt obligation.* Methods by which an underlying debt obligation may be terminated include, among other things, repayment, refinancing, rescission, and foreclosure.

2. *Minimum durations.* Section 226.45(b)(3) establishes minimum durations for which escrow accounts established pursuant to § 226.45(b)(1) must be maintained. This requirement does not affect a creditor's right or obligation, pursuant to the terms of the legal obligation or applicable law, to offer or require an escrow account thereafter.

3. *Twenty percent equity.* The term "original value" in § 226.45(b)(3)(ii)(A) means the lesser of the sales price reflected in the sales contract for the property, if any, or the appraised value of the property at the time the transaction was consummated. In determining whether 20% of the original value of the property securing the underlying debt obligation is unencumbered, the creditor or servicer shall count any subordinate lien of which it has reason to know. If the consumer certifies in writing that the equity in the property securing the underlying debit obligation is unencumbered by a subordinate lien, the creditor or servicer may rely upon the certification in making its determination.◄

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in H–18, H–19, H–20, H–21, H–22, H–23, ►H–24, H–25, H–26,◄G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19, G–20, and G–21, or to the model clauses in H–4(E), H–4(F), H–4(G), and H–4(H). Creditors may modify the heading of the second column shown in Model Clause H–4(H) to read "first adjustment" or "first increase," as applicable, pursuant to § 226.18(s)(2)(i)(C). The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using "borrower" and "creditor" instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state "plain English" requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

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Appendix H—Closed-End Model Forms and Clauses

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►29. *Models H–24 through H–26.* Model Form H–24 contains the disclosures for the establishment of an escrow account, Model Form H–25 contains the disclosures for the non-establishment of an escrow account, and Model Form H–26 contains the disclosures for the cancellation of an escrow account established in connection with a closed-end transaction secured by a first lien on real property or a dwelling.

i. These model forms illustrate, in the tabular format, the disclosures required generally by §§ 226.19(f) and 226.20(d).

ii. A creditor satisfies § 226.19(f)(2) if it provides the appropriate model form (H–24 or H–25) and a creditor or servicer satisfies § 226.20(d)(2) if it provides Model Form H–26, or a substantially similar notice, which is properly completed with the disclosures required by § 226.19(f)(2) or § 226.20(d)(2), respectively.

iii. Although creditors and servicers are not required to use a certain paper size in disclosing the information under §§ 226.19(f) and 226.20(d), Model Forms H–24 through H–26 are designed to be printed on an 8½ × 11 inch sheet of paper. In addition, the following formatting techniques were used in presenting the information in the model

forms to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style);

B. Sufficient spacing between lines of the text;

C. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type;

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text;

E. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

iv. While the regulation does not require creditors or servicers to use the above formatting techniques in presenting information in the tabular format (except for the 10-point minimum font requirement), creditors and servicers are encouraged to consider these techniques when deciding how to disclose information in the notice to ensure that the information is presented in a readable format.

v. Creditors and servicers may use color, shading and similar graphic techniques with respect to the notice, so long as the notice remains substantially similar to the model forms in Appendix H.◄

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By order of the Board of Governors of the Federal Reserve System, February 23, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–4385 Filed 3–1–11; 8:45 am]

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FEDERAL REGISTER

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Part IV

Federal Communications Commission

47 CFR Parts 36, 54, 61, *et al.*
Connect America Fund; Developing a Unified Intercarrier Compensation; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54, 61, 64, and 69

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; FCC 11–13]

Connect America Fund; Developing a Unified Intercarrier Compensation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes several specific, near-term steps that will accelerate broadband investment in unserved areas and set the Universal Service Fund and Intercarrier Compensation system on a path that is consistent with the principles the Commission has proposed; the Commission then describes alternatives for completing the reform process over the longer term. The Commission intends to monitor the progress of the near-term reforms and adjust course as necessary as the Commission completes the reform process from among the longer-term options.

DATES: Comments are due on or before April 18, 2011 and reply comments are due on or before May 23, 2011. See Supplementary Information section for additional comment dates.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.
- In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Patrick Halley, Wireline Competition Bureau, (202) 418–7550 or Jennifer Prime, Wireline Competition Bureau, (202) 418–2403 or TTY: (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM) in WC Docket No. 10–90, GN Docket No. 09–51, WC Docket No. 07–135, WC Docket No. 05–337, CC Docket No. 01–92, CC Docket No. 96–45, and WC Docket No. 03–109, FCC 11–13, adopted February 8, 2011, and released February 9, 2011. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
  - *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com; phone:* 1–800–378–3160. Furthermore, three copies of each pleading must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554; *e-mail: Charles.Tyler@fcc.gov.*

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554.

Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, D.C. 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com,* by e-mail at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (tty), or by facsimile at (202) 488–5563.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov;* phone: (202) 418–0530 or TTY: (202) 418–0432.

To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

For further information regarding this proceeding, contact Patrick Halley, Attorney Advisor, Wireline Competition Bureau at (202) 418–7389, *Patrick.Halley@fcc.gov,* or Jennifer Prime, Attorney Advisor, Wireline Competition Bureau at (202) 418–2403, *jennifer.prime@fcc.gov*.

Initial Paperwork Reduction Act of 1995 Analysis: This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due May 2, 2011.

Comments on the proposed information collection requirements should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0298.

Title: Part 61, Tariffs (Other than Tariff Review Plan).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 630 respondents; 1,210 responses.

Estimated Time per Response: 50 hours.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 1–5, 201–205, 208, 251–271, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 201–205, 208, 251–271, 403, 502, and 503.

Frequency of Response: One-time, on occasion and biennial reporting requirements.

Total Annual Burden: 63,000 hours.

Annual Cost Burden: $986,150.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Sections 201, 202, 203, 204 and 205 of the Communications Act of 1934, ("Act") as amended, 47 U.S.C. 201, 202, 203, 204 and 205, require that common carriers establish just and reasonable charges, practices and regulations which must be filed with the Commission which is required to determine whether such schedules are just, reasonable and not unduly discriminatory.

Part 61 of the Commission's rules, 47 CFR part 61, establishes the procedures for filing tariffs which contain the charges, practices and regulations of the common carriers, supporting economic data and other related documents. The supporting data must also conform to other parts of the Commission's rules such as 47 CFR parts 36 and 69. Part 61 prescribes the framework for the initial establishment of and subsequent revisions to tariffs. Tariffs that do not conform to Part 61 may be required to post their schedules or rates and regulations, 47 CFR 61.72.

In this Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (FCC 11–13), the Commission proposes revised rules that would require incumbent rate-of-return and competitive local exchange carriers to file revised tariffs if they engage in revenue sharing arrangements. We estimate that this could result in a one-time increase in the frequency of response of up to 50 carriers because they would have to make the necessary tariff filing within 45 days of the final rules becoming effective. Any subsequent tariffing requirements should be encompassed in the ongoing estimates for this information collection.

I. Summary

A. Legal Authority To Support Broadband

1. Additional Section 254(b) Principle

1. We propose to adopt the principle, as recommended by the Federal-State Joint Board on Universal Service in November 2010, "that universal service support should be directed where possible to networks that provide advanced services, as well as voice services," pursuant to section 254(b)(7), and seek comment on that proposal. If we adopt the proposed principle, how should we apply it with respect to the other criteria in section 254?

2. Commission Authority To Support Broadband

2. We have express statutory authority to extend universal service support to broadband services that providers offer as telecommunications services. We believe we also have authority to extend universal service support to broadband services offered as information services under section 254, section 706 and/or our ancillary authority. In any event, we believe we have clear authority to condition awards of universal service support on a recipient's commitment to offer broadband service. We seek comment on these issues, as well as any

other approaches that would buttress our legal authority.

a. Section 254

3. We seek comment on whether, read as a whole, section 254 may reasonably be interpreted to authorize the Commission to support broadband service. Could we provide support to information service providers consistent with section 254(e) and 214(e)? If not, under what mechanism could we designate and offer support to information service providers? What role would the states play in designating eligible information service providers? Would disbursement of support to information service providers comport with federal appropriations laws? We seek comment on these and other pertinent issues.

4. In the event we interpret section 254 to authorize support of broadband, we also seek comment on adding broadband to the supported services list. Before modifying the list of supported services, the Commission must "consider the extent to which such telecommunications services—(1) are essential to education, public health, or public safety; (2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (3) are being deployed in public telecommunications networks by telecommunications carriers; and (4) are consistent with the public interest, convenience, and necessity."

5. In 2007, the Joint Board also recommended that the Commission revise the definition of supported services to include mobility, concluding that both broadband and mobility satisfied the four part criteria and should be eligible for federal universal service support.

6. The Commission currently requires ETCs to provide all of the supported services. If we were to add broadband and/or mobility to the list of supported services, should we create separate designations for each supported service (voice, broadband, and mobility) so that a provider does not need to offer all of the supported services to be eligible for support, as the Joint Board recommended in 2007? We seek comment on this proposal. We also ask what would be the impact of such an approach on Lifeline providers, who today also are required to offer all supported services.

b. Section 706

7. We seek comment on whether sections 706(a) and (b), alone or in concert with sections 254 and 214(e), grant us authority to provide universal service support for broadband information services. We believe that providing universal service support for broadband would "remove barriers to infrastructure investment" by supplying financial incentives to invest in areas where it may otherwise be uneconomic to do so. We seek comment on this issue. Would providing support for broadband information services under section 706 be inconsistent with the definition of universal service in section 254(c) or the limitation of support to ETCs in section 254(e)? If we act pursuant to section 706 alone, would we have authority to collect universal service contributions and disburse them to eligible recipients under the current universal service mechanisms, or should we develop a separate mechanism under our section 706 authority? Would the collection and disbursement of funds comport with federal appropriations laws? What criteria should we use to determine who is eligible to receive support? What role should states play? We seek comment on these and other relevant issues.

c. Title I Ancillary Authority

8. We seek comment on whether the Commission could rely on its ancillary authority in Title 1 to support broadband information services. Would providing support for broadband be reasonably ancillary to the Commission's statutory responsibilities under section 254(b)? Similarly, would supporting broadband be reasonably ancillary to section 706 as a "specific delegation of legislative authority" to encourage deployment of advanced telecommunications capability to all Americans? We seek comment on whether these provisions or others provide a sufficient statutory basis for exercising ancillary authority. As with other theories described above, we also seek comment on what criteria should be used to designate eligible recipients, and on who should perform the designations. We also seek comment on whether adopting the competitive bidding process in the first phase of the CAF and permanent CAF programs pursuant to our ancillary authority would be consistent with federal appropriations laws. We invite comment on these and any other relevant issues.

d. Conditional Support

9. We believe the Commission also has authority to direct high-cost or CAF support toward broadband-capable networks by conditioning awards of universal service support on a recipient's commitment to offer broadband service alongside supported voice services. We see no reason why conditioning the receipt of support on offering broadband is not permissible under the Commission's general authority to promulgate general rules related to universal service. We invite comment on this approach.

e. Other Approaches

10. *Forbearance.* We seek comment on whether we should exercise our section 10 forbearance authority, alone or in combination with any of the theories described above, to facilitate use of funding to support broadband information services. For example, could we forbear from applying section 254(c)(1), which defines universal service as an evolving level of telecommunications services? Could we likewise forbear from applying sections 254(e) and 214(e), which restrict universal service support to ETCs? Are the statutory criteria for forbearance from these provisions met? Are there any other provisions from which we should forbear? If we grant forbearance, may we adopt rules that are broader than the statutory provisions? We seek comment on these issues.

11. *Classifying Interconnected VoIP.* We also invite comment on whether we should consider classifying interconnected voice over Internet protocol as a telecommunications service or an information service. If the Commission were to classify interconnected VoIP as a telecommunications service, this would enable the Commission to support networks used to provide interconnected VoIP, including broadband networks. We seek comment on this issue. Does interconnected VoIP have characteristics that warrant classifying it as a telecommunications service or an information service? If the Commission classified interconnected VoIP as a telecommunications service, should we forbear from applying any provisions in Title II to the service? We request comment.

12. We invite parties to comment on these and any other legal theories that they believe will provide a sound legal basis for providing universal service support for broadband.

B. Setting American on a Path to Reform

1. National Goals and Priorities for Universal Service

13. We propose the following four priorities for the federal universal service high-cost program: (1) To preserve and advance voice service; (2) to ensure universal deployment of modern networks capable of supporting necessary broadband applications as

well as voice service; (3) to ensure that rates for broadband service are reasonably comparable in all regions of the nation, and rates for voice service are reasonably comparable in all regions of the nation; (4) to limit the contribution burden on households.

14. We ask that commenters consider the reform proposals in light of these reform priorities, and ask commenters to suggest additional or alternative priorities, and how to prioritize them. We ask whether advancing the deployment of mobile networks should be its own independent priority. We seek comment on other priorities, including competitive neutrality and technology neutrality, and whether our proposed reforms are consistent section 254(b)(5) that support "should be specific, predictable, and sufficient."

2. Encouraging State Action To Advance Universal Service

15. We seek comment generally on the role of the states in preserving and advancing universal service as we transition from the current programs to the Connect America Fund. We welcome the input of the state members of the Joint Board on these and other important questions.

16. We seek comment on what level of financial commitment should be expected from the states and territories to advance broadband, and on how to address the different features of states, and the various state efforts to preserve and advance universal service. We seek comment on how to encourage or require additional commitments to support universal service by states in partnership with the federal government.

3. Eligible Telecommunications Carrier Requirements

17. We seek comment on how the Commission can best interpret existing ETC requirements to achieve our goals for reform. We also seek comment on whether (and if so how) we should modify the ETC requirements. How would we provide incentives for state commissions to apply any Commission-adopted requirements to ETCs designated by states? Alternatively, we seek comment on whether the Commission could or should forbear from requiring that recipients be designated as ETCs at all, and if so, in particular whether the Commission could forbear from applying section 254(e) to entities that are not telecommunications carriers to allow their receipt of universal service support to serve rural, insular and high-cost areas under the Act. If we do forbear from this requirement, what if any requirements should replace it? How should we transition from existing to any new requirements? How should existing ETCs be treated during such a transition?

4. Public Interest Obligations of Fund Recipients

18. We seek comment on what public interest obligations should apply to ETCs going forward, as we reform and modernize the existing high-cost program to advance broadband. We ask commenters to address whether the public interest obligations proposed below should vary, depending on whether broadband is a supported service, or alternatively, if support is provided to voice recipients conditioned on their deployment of broadband-capable facilities. We propose that public interest obligations apply generally to all funding recipients. We ask commenters to what extent, if any, should the obligations vary for recipients under the current high-cost funding programs, recipients of funding in the first phase of CAF funding, and Long-Term CAF recipients. We ask commenters to consider and explain whether (and if so how) each of the obligations discussed below should apply under what circumstances, recognizing that it may be appropriate to tailor obligations to avoid unfunded mandates. We also ask commenters to address specifically whether the duties and responsibilities of ETCs should differ depending on whether they are also the state-mandated carrier of last resort in a particular area. We seek comment on how best to balance the costs and burdens associated with the monitoring of, enforcement of, and compliance with the proposed public interest obligations with our principles of fiscal responsibility and accountability and our goal of rapidly increasing broadband deployment in unserved areas.

a. Characteristics of Voice Service

19. We propose to simplify how we describe core voice service functionalities into one term: "voice telephony service." Should we preserve the definition of "voice grade access" to the public switched network in § 54.101 of the Commission's rules? Parties that support a different definition should provide analysis and data supporting such a definition. Parties should also explain whether such a definition would be technology-neutral and if not, the basis for adopting a definition that is not technology-neutral.

b. Voice Obligations

20. We propose that recipients must provide "voice telephony service" throughout their designated service areas. We propose that recipients be permitted to partner with another voice provider to provide "voice telephony service." We propose that recipients be required to offer voice telephony service as a standalone service. We propose that recipients continue to be subject to any applicable baseline state or federal requirements for the provision of voice service by ETCs. We seek comment on how to create incentives for states to re-evaluate and harmonize the requirements they impose on the ETCs that they designate to be consistent with any new federal requirements. Should there be any additional obligations imposed on recipients serving areas in which the telephone penetration rate historically has been substantially lower than the national average (*e.g.,* on Tribal lands and in Native communities)? Given that we envision a transition to an integrated voice-broadband network in the future, how should voice universal service public interest obligations change over time? In the future, will there be a need for separate voice and broadband public interest obligations?

c. Characteristics of Broadband Service

21. We propose to adopt metrics for broadband using specific performance characteristics that would apply to the CAF and also to the existing high-cost program, until it is transitioned into the CAF. We seek comment on whether there are reasons to adopt technology-specific minimum standards that would depend on the technology deployed. We seek comment on whether we should characterize broadband by its speed, functional attributes, or in some other way. Commenters should discuss additional ways of measuring broadband services provided to consumers, such as throughput, latency, jitter, or packet loss, for purposes of establishing performance requirements for recipients. We seek comment on the National Broadband Plan recommendation of 4 Mbps actual download/1 Mbps actual upload, or, alternatively, of 3 Mbps of actual download speed/768 kbps of actual upload speed, or a different speed requirement. We seek comment on whether there are other metrics we should consider that are unrelated to speed or service quality, such as mobility.

22. *Measuring the Attributes of Broadband.* We propose that recipients test their broadband networks for compliance with whatever metrics

ultimately are adopted and report the results to USAC on a quarterly basis, and that these results be subject to audit. Alternatively, should we instead require that recipients provide a specific speed (*e.g.,* 4/1 Mbps) at a "reasonable service quality," and rely on customer complaints regarding the quality of their broadband as a means of enforcing service quality? We propose that the attributes be measured on each broadband provider's access network from the end-user interface (modem) to the closest peering point between the broadband provider and the public Internet.

23. *Evolution.* We seek comment on how often we should re-evaluate our broadband requirements, and what would be the appropriate procedural vehicle (*e.g.,* the Commission's annual section 706 inquiry).

d. Broadband Obligations

24. We propose that all existing high-cost funding recipients going forward and all future CAF recipients must offer broadband service that meets or exceeds the minimum metrics prescribed by the Commission, assuming they receive funding for that purpose. We propose that all recipients should be subject to an annual certification regarding compliance with any obligations that we ultimately adopt for the provision of USF-supported broadband services.

(i) Service, Coverage, and Deployment

25. *Service Requirement.* We seek comment on whether to impose a service requirement, which would specify that a recipient must provide service upon request within a reasonable period of time, or a service requirement and a coverage requirement on recipients. We also seek comment on whether to adopt specific requirements to ensure providers are meeting a service requirement.

26. *Coverage Requirement.* We seek comment on whether to adopt a coverage requirement (e.g., recipients must cover 99 percent of all housing units in an area) in addition to a service requirement, and whether to adopt a specific timeframe or specific milestones for a deployment schedule. We propose that recipients be permitted to partner with another broadband provider to provide broadband service in areas where the recipient has not yet built its network, and seek comment on whether we should limit the number of housing units in a given service area that can be served by a partnering arrangement with a satellite provider in order to most efficiently leverage the capacity of satellite throughout the unserved high-cost areas across the nation. Alternatively, we seek comment on whether support recipients should be allowed to carve out from the coverage requirement a small percentage of housing units that may be served by high-speed Internet access service that may not meet the minimum performance metrics adopted by the Commission. We seek comment on how recipients should demonstrate compliance with a coverage requirement.

(ii) Affordable and Reasonably Comparable Rates

27. We propose that recipients must offer voice and broadband (individually and together) at rates that are affordable and reasonably comparable to rates in urban areas, whether or not broadband is a supported service, and seek comment on how to measure "affordable" and "reasonably comparable." We seek comment on how the Commission should obtain data on voice and broadband pricing to develop possible rate benchmarks for supported voice and/or broadband service.

(iii) Additional Considerations

28. *Joint Infrastructure Use.* We seek comment on the costs and benefits of applying policies to encourage sharing of infrastructure, including by residential and anchor institution users.

29. We also seek comment on how USF can best achieve synergies with the connectivity objectives for schools, libraries, and rural health care facilities in section 254 of the Act. Where build out is required to connect these particular types of community anchor institutions, should this construction be supported through the CAF, E-rate, or Rural Health Care programs, individually or in combination? Should USF recipients have any obligations to serve anchor institutions in the communities in which they serve residential customers?

30. *Other Public Interest Obligations.* We seek comment on whether any additional public interest obligations should apply to USF recipients, such as marketing of broadband service or providing customers with the option to subscribe to a basic broadband service on a stand-alone basis, or prohibiting term commitments or early termination penalties. We also seek comment on public interest requirements that should apply to carriers providing service on Tribal lands, such as requiring recipients to provide broadband to Tribal and Native community institutions.

31. *Evolution.* We propose that we periodically re-evaluate the broadband public interest obligations, and seek comment on whether they should be re-evaluated at the same time the Commission re-evaluates its broadband metrics, or less frequently. We seek comment on the effect that changing the obligations would have on program administration and on funding recipients. We propose that the Commission re-examine funding levels each time it re-evaluates the public interest obligations.

32. *Remedies for Non-Compliance.* We seek comment on remedies for failure to meet any public interest obligations, including but not limited to loss of universal service funding and repayment of funds already disbursed. We propose that USAC recover funds through its normal processes in instances where an audit or investigation finds that a recipient has failed to comply with certain CAF program rules and requirements.

33. *Waiver.* We propose to allow those carriers that are unable to meet an adopted deployment schedule to seek a waiver of the requirement from the Commission, and seek comment on what the criteria should be for such a waiver.

34. *Role of States and Tribal Governments.* We seek comment on the role of states and Tribal governments in enforcing these federally defined public interest obligations and whether states or Tribal governments may impose additional obligations on funded providers.

C. Near-Term Universal Service Reforms

1. Rationalizing Loop Support, Local Switching Support, and Interstate Common Line Support

35. In October 2010, we issued the *Mobility Fund NPRM,* 75 FR 67060, November 1, 2010, which proposed a Mobility Fund intended to spur build out of advanced mobile wireless networks in areas not served by current-generation mobile networks. We now continue our reform efforts in this proceeding by proposing steps to spur broadband build out, whether fixed or mobile, in unserved areas, which exist in every state as well as the territories. We propose to do this by transitioning funds from less efficient uses to more efficient uses, including through the creation of the CAF. We also seek comment on other measures to reduce inefficiencies, extend broadband, and increase the accountability of companies receiving support.

36. Three components of the high-cost program primarily support smaller carriers regulated under "rate-of-return" rules: High-cost loop support (HCLS), which provided $1 billion for

incumbents in 2010; local switching support (LSS), which provided $276 million for incumbents in 2010; and interstate common line support (ICLS), which provided $1.1 billion for incumbents in 2010. As currently structured, these funding mechanisms provide poor incentives for rate-of-return carriers to operate and invest efficiently. While individual carriers may act in the best interests of their own customers and communities, excessive spending by any one community limits opportunities for consumers in other communities and may not be in the best interests of the nation as a whole. HCLS, for example, creates incentives for companies to outspend their peers in order to receive more funding under the current capped formula. For all three programs, there are few, if any, benchmarks for determining whether network investment is justified or appropriate, allowing a company to spend millions of dollars to build a state-of-the art network that may serve only a few customers. LSS was originally created to help small telephone companies that lack economies of scale to afford large switches, but since then the industry has moved to software-based routers and switches which can be more easily scaled to a company's size and even shared among companies. LSS now provides perverse incentives for companies not to realize efficiencies by combining service areas. We seek comment on a suite of reforms to these components, which will increase accountability and start rate-of-return carriers on the path towards market-driven, incentive-based regulation.

37. Specifically, we seek comment on the following reforms to be implemented beginning in 2012:

38. Modification of HCLS. We propose to reduce the reimbursement rates for rural incumbent LECs to 55% and 65%, from 65% and 75%, in order to encourage more efficient operations and to facilitate more equitable distribution of HCLS under the HCLS cap. We propose to eliminate from the rules, HCLS for rural incumbent LECs with more than 200,000 loops because there are no rural incumbent LECs with more than 200,000 lines receiving support and such incumbent LECs are well below the qualifying threshold. We propose to eliminate the "safety net additive" because it is not working as intended. Many carriers are qualifying because of the loss of lines, not because of significant increased investment.

39. Modification of LSS. We propose to eliminate LSS because LSS was designed when small incumbent LECs had to buy expensive mechanical switches, however, today's soft switches are more scalable to small operations. Alternatively, we propose to combine HCLS and LSS into one high-cost mechanism that would flow to areas with above-average costs in the same manner as HCLS does now.

40. Modification or Elimination of Corporate Operations Expense Eligibility for Universal Service Support. We propose to reduce or eliminate the eligibility of corporate operations (overhead) expenses for purposes of universal service support. Currently, corporate operations eligibility is limited for HCLS, but no limited for LSS and ICLS. We desire to focus finite universal service funds more directly to investments in network build-out, maintenance, and upgrades—not highly discretionary expenses.

41. Limits on Reimbursable Capital and Operating Costs. We propose to improve incentives for efficient operations by establishing benchmarks for reasonable capital and operating costs for universal service support purposes. The benchmarks would be based on a simplified model taking into account key drivers of cost (such as population density, topography, soil type, etc.). Capital or operating costs above the benchmarks would not be eligible for reimbursement through high-cost universal service mechanisms. We also seek comment regarding whether above-benchmark costs should be reimbursable based on a showing that such costs are justifiable and alternative means of recovering above-benchmark costs from other revenue sources.

42. Limits on Total per Line High-Cost Support. We propose to cap total annual support per line for all companies operating within the continental United States, *e.g.,* $3,000 per line annually. Eighteen companies currently receive more than $3,000 per line annually, five receive more than $10,000 per line annually, and one receives $20,000 per line annually. We seek comment whether companies receiving more than the cap should be able to make a showing that additional support is in the public interest.

2. Reducing Barriers to Operating Efficiencies

43. Study area waiver process. We propose to streamline the study area waiver process that would deem the waiver granted 60 days after the end of the comment cycle, absent any further action by the Bureau. We propose to eliminate the one-percent standard in evaluating study area waivers and focus evaluation on the number of lines at issue, projected USF support per line, and whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of economies of scale.

44. Revising the "Parent Trap" Rule, § 54.305 of the Commission's rules. We propose to eliminate the parent trap rule five years after grant of the relevant study area waiver and if a certain minimum percentage of the acquired lines, *e.g.,* 30% are unserved by 768 kbps broadband. Section 54.305(b) of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer. This proposal is to encourage carriers subject to § 54.305 of the Commission's rules to invest in modern communications networks in unserved areas. We seek comment on revising § 54.305 of the Commission's rules so that rural incumbent LECs, subject to § 54.305 of the Commission's rules, would receive either the lesser of the support pursuant to § 54.305 of the Commission's rules or the support based on their own actual costs. Some rural incumbent LECs currently receive support pursuant to § 54.305 of the Commission's rules, that would not receive any support or would receive lesser support based upon their own costs.

3. Transitioning Interstate Access Support (IAS) to the CAF

45. We propose to phase out IAS for both incumbent price cap carriers and competitive eligible telecommunications carriers (ETCs) over a period of a few years. In 2010, IAS totaled $545 million. Originally created in 2000 as part of a five-year transitional reform plan, IAS has long outlived its intended lifespan. The comments received in response to the *USF Reform NOI/NPRM,* 75 FR 26906, May 13, 2010, suggest that this fund is not critical to ensuring rural voice service, and we believe the funds could be more productively used to support the deployment of broadband to unserved areas. We seek comment on transitioning IAS to the CAF and the consequences of doing so.

4. Rationalizing Competitive ETC Support Through Elimination of the Identical Support Rule

46. We propose to eliminate the "identical support" rule and to transition available competitive ETC support to the CAF over a several-year period. Under the Commission's identical support rule, competitive ETCs (mostly wireless carriers) receive, subject to an interim cap, the same per-

line high-cost support as incumbent carriers serving the same area regardless of actual costs or needs. As a result, the funding is poorly targeted—in some areas, as many as four or more providers are receiving redundant ETC funding, while other areas lack even a single provider of broadband or mobile voice. Two of the largest ETCs have voluntarily agreed to relinquish their ETC support in the context of transactions, and the *USF Reform NOI/NPRM* record supports the conclusion that current levels of competitive ETC support are unnecessary to ensure fixed or mobile voice service in many areas of the country that receive support today. At the same time, we recognize the importance of mobile voice and mobile broadband coverage in all areas of the country and seek comment on how to balance the desire for universal mobile coverage with other USF priorities. Our proposal in the Mobility Fund proceeding was intended to provide a one-time infusion to expand mobile coverage. We seek comment here on how best to factor the need for mobility into the reforms proposed in this proceeding to achieve our universal service objectives. Specifically, we seek comment on transitioning available competitive ETC support to the CAF, over what schedule such transition should occur, and whether waivers or exceptions should be made, such as for competitive ETCs serving Tribal lands or when immediate transition of support to the CAF would disrupt the availability of wireless service in area.

47. Taken together, the proposed changes to the high-cost program will enable significant funds to be used to support fixed and mobile broadband, as discussed below, and potentially a recovery mechanism associated with ICC reform, where necessary, as summarized below.

5. First Phase of the Connect America Fund

48. In the first phase of the CAF, we propose to award, through a reverse auction process, non-recurring support for broadband areas identified in unserved areas, as determined by the forthcoming National Broadband Map and/or our Form 477 data collection (i.e., areas without broadband advertised as providing download speeds of at least 768 kbps). That targeted funding will supplement, not replace, other support provided through the high-cost program in its current form or as modified as part of the reforms proposed above.

(i) Basic Framework for the Connect America Fund Phase I

49. We seek comment on our authority to establish a program under which non-recurring support would be provided, based on a competitive bidding system, to a single entity to deploy and provide broadband service.

50. We propose to design the first phase of the CAF to use funds efficiently to expand broadband to as many unserved housing units—that would be unlikely to be served soon or at all without public investment—as possible. We propose to fund the first phase of the CAF with savings realized from certain carriers' voluntary relinquishment of USF support along with savings realized from other proposed reforms to existing high-cost mechanisms.

51. We propose to use auctions to determine the entities that will receive support under the first phase of the CAF and the amount of support they will receive. We propose to award a fixed amount of support, paid out in installments, based on the lowest bid amounts submitted in a reverse auction. We seek comment generally on how to design a competitive process to determine recipients and support amounts in light of our goals.

52. We propose to fund no more than one auction winner per unserved area. We propose to exclude satellite providers from bidding in the auction but to permit them to partner with a terrestrial (wireless or wireline) provider. We propose to compare bids across the country, rather than comparing them within certain subsets of otherwise eligible areas.

(ii) Identifying Unserved Areas Eligible for Support

53. We propose to use the National Broadband Map to determine what areas are unserved, and seek comment on how to use the Map for this purpose; alternatively, should we rely on information from an updated Form 477. We propose to identify unserved areas on a census-block basis, but seek comment on whether another unit of geographic area would better serve our goals.

54. We propose to evaluate bids on an "amount per unserved unit" basis. We propose to use unserved housing units to establish a baseline number of unserved units per census block. We seek comment on whether the number of unserved units should be adjusted to reflect community anchor institutions and the like, and, if so, how we would obtain the necessary data to be able to determine with a sufficient level of accuracy the number of businesses and other institutions in a given area.

55. We seek comment on whether we should limit support—or provide bidding credits—to bidders in states that have taken or are taking measures to reduce intrastate switched access rates. We seek comment on whether we should prioritize support for states that have created state high-cost USF programs. We seek comment on whether we should take into account states' actions relating to municipal broadband—*e.g.*, whether there should be bidding credits for projects in states where municipal broadband is permitted.

56. We seek comment on whether we should reserve funds for Tribal areas, or provide bidding credits for bidders, including Tribally owned bidders, who wish to deploy on Tribal lands. We further seek comment on whether any funds reserved for Tribal lands that remain unawarded should be treated any differently from unreserved funds that remain unawarded after the auction. We further seek comment on how to design the first phase of the CAF to include Tribal governments to ensure efficient operation on Tribal lands. In addition, we seek comment on whether we should reserve funds for insular areas, or provide bidding credits for those who wish to deploy in insular areas.

(iii) Pre-Existing Deployment Plans

57. We seek comment on how to structure the program to avoid outcomes that would be inconsistent with the goal of increasing broadband deployment in unserved rural and high-cost areas, not funding existing facilities or deployment to which a carrier has already committed to federal or state regulators.

(iv) Public Interest Obligations

58. We propose to have a Commission-defined coverage requirement. In the alternative, we could use bidder-defined coverage requirements. We seek comment on both.

59. We propose that recipients build networks of at least 4 Mbps (downstream) and 1 Mbps (upstream). We seek comment on this proposal and whether the speed requirement should evolve.

60. We propose that recipients deploy within 3 years of funding. We propose that obligations last for a specified period of years, such as 5, after completion of buildout. We seek comment on whether to require support recipients to meet interim deployment milestones.

61. Given the ongoing nature of our reform efforts, we seek comment on whether, upon the completion of comprehensive universal service reform, recipients that ultimately receive support should be relieved of their obligations under the first phase of the CAF, with those obligations being replaced by any public interest obligations imposed on ultimate CAF recipients. We seek comment on what should happen to a recipient's obligations in the first phase of the CAF once someone in the area (either the recipient of support in the first phase of the CAF or another carrier) receives long-term CAF support.

(v) Eligibility Requirements for the First Phase of the CAF

62. We propose that recipients in the first phase of the CAF be designated (or have applied for designation) ETCs by a state (or the FCC, as appropriate), as required by the Act; alternatively, we seek comment on whether to forbear from that requirement.

63. We seek comment on permitting carriers to apply for ETC designation on a conditional basis, so that they are not required to satisfy ETC obligations where they don't get any funding.

64. We propose that an applicant must be a terrestrial wireline or wireless service provider and hold, or have access to, any required authorization to provide the required services.

65. We propose to limit participation in the auction to those applicants able to certify that they have submitted all requested broadband deployment data as part of the State Broadband Data and Deployment program. Parties that have not been requested to provide such data would be permitted to certify that they have provided all data requested. We seek comment on this proposal generally, and on whether such a limitation should apply to Tribal areas.

(vi) Auction Process

66. We propose rules for and seek comment on certain elements of the auction process, including the application and bidding process.

67. We propose a two-stage application process similar to the one we use in spectrum license auctions. Based on the eligibility requirements for support in the first phase of the CAF, we would require a pre-auction "short-form" application to establish eligibility to participate in the auction, relying primarily on disclosures as to identity and ownership and applicant certifications, and perform a more extensive, post-auction review of the winning bidders' qualifications based on required "long-form" applications.

68. *Short Form Application.* We propose generally that the short form application will include basic ownership information about the carrier and information about any partnerships the carrier has entered for the first phase of the CAF; identification of areas where the carrier might possibly bid; and certification that the bidder is qualified to participate in the auction.

69. *Auction Design and Bidding Process.* We seek comment on the best auction design to maximize the deployment of broadband to housing units where there is no broadband now. We also seek comment on alternative methods of establishing coverage requirements in areas for which support is received. We seek comment on how to encourage bidders to go beyond their Commission- or bidder-defined coverage requirement.

70. We propose to select winning bidders and award support based on bids that state a price at which the bidder would meet our minimum performance requirements for the number of housing (or other) units covered by the bid, ranking bids by price per unit covered. We seek comment on whether we should use weighted criteria or bidding credits to adjust the bids to account for commitments to exceed our minimum requirements and to account for other benefits, such as higher speed, lower latency, mobility, or a better upgrade path. We could also use such credits/adjustments to allow tradeoffs, such as allowing a provider to bid to provide service that does not meet our speed standard but does offer mobility.

71. We propose that bidders should be able to aggregate census blocks together to bid on a package, and seek comment, generally, on how we should design the auction to accommodate package bidding.

(vii) Post-Auction Process and Administration for the First Phase of the CAF

72. We propose that, following the auction, identified winning bidders submit long form applications within 10 days.

73. We seek comment on the specific information and showings that should be required of winning bidders on the long-form application before they can be certified to receive support and before actual disbursements in the first phase of the CAF can be made to them. We propose that an applicant be required to confirm ownership information provided in its pre-auction short-form application or to update that information, as appropriate. We further seek comment on whether we should require applicants in the first phase of the CAF to provide any other ownership information.

74. We propose that an applicant provide detailed information about the network it intends to deploy and seek comment on what else we should require.

(viii) Guarantee of Performance

75. We propose that a winning bidder should post financial security, such as a letter of credit, and seek comment on whether there is an alternative that would provide adequate protection; we also seek comment on whether some carriers should be exempt from this requirement.

(ix) Disbursing Support

76. We propose that payments be made over time as milestones are reached; for example, 50 percent paid after winning the bid, then 25 percent paid after 50 percent deployment, and the final 25 percent paid on completion.

77. We propose to disburse money in a manner consistent with the Antideficiency Act, which means that if we auction off support that we do not already have on hand, only the first payment would be guaranteed, the other payments would be made only on a determination by the Commission that payment was appropriate. The Commission's compliance with the Antideficiency Act is currently assured under the terms of an exemption, scheduled to expire December 31, 2011, which permits the Commission to obligate certain universal service funds before they are collected. We seek comment, however, on how to assure compliance in the event the exemption is permitted to lapse.

(x) Liabilities for Failure To Deploy and Ensuring Compliance

78. We seek comment on what kinds of penalties are appropriate if a carrier fails to deploy as promised. We propose to require carriers to agree that support in the first phase of the CAF is contingent upon completion (or substantial completion) of the buildout in accordance with specified performance requirements. We seek comment on, among other things, whether carriers should be subject to additional liabilities and/or security requirements (such as letters of credit or performance bonds) to provide them with incentives to perform and to protect the CAF in case they fail to perform as required.

79. We seek comment on whether bidders that are found to have failed to meet their obligations relating to the CAF should similarly be ineligible for

Commission action until they can demonstrate that they have complied with their obligations or obtained a waiver.

80. We will require recipients of CAF support to comply with audits and record retention requirements. We propose to confirm that deployment is occurring through inspections in the field, and we seek comment on what kinds of verification procedures are appropriate.

(xi) Delegation of Authority

81. We propose to delegate to the Wireline Competition Bureau and the Wireless Telecommunications Bureau the authority to determine, subject to existing legal requirements such as the rules of the Office of Management and Budget, the method and procedures for applicants and recipients to submit appropriate information.

6. Targeting Support

a. Disaggregating Support

82. We propose to target support more directly to the areas of greatest need by requiring rural carriers to disaggregate support within existing study areas beginning in 2012, pursuant to § 54.315 of the Commission's rules, and invite comment on the proposal.

b. Redrawing Study Areas

83. We seek comment on whether we should begin a process in the near term to establish new service areas that would be eligible for ongoing support under the CAF in stage two of our comprehensive reform. We seek comment on whether we should take steps to encourage states to redraw existing study area boundaries to create more narrowly targeted service areas for purposes of the CAF by a specified date, and what actions we may take if states decline to do so. We seek comment on issues related to the geographic scope of ETC obligations and ETC designations.

7. Pending Proceedings and Other Issues

84. We seek comment on proposals in the record and invite parties to update their proposals as appropriate.

85. *Broadband Now Plan.* We seek comment on whether and how the recommendations in the Broadband Now Plan, submitted by a group of mid-sized carriers in 2009, could be operationalized in the context of the reforms proposed in this Notice.

86. *NCTA Petition for Rulemaking.* We seek focused comment on how the presence of unsubsidized competition should be factored into our proposals generally. We seek comment on whether we should eliminate universal service in any study area where there is 100% coverage by an unsubsidized voice provider, or whether we should create a rebuttable presumption that universal service support is unnecessary in those study areas where at least 95% of the households can get service from an unsubsidized competitor, and on the impact of such a process on the incumbent and the consumers in that area. We also seek comment on whether and how to rationalize funding in circumstances in which a single company operates two or more networks in the same area (*e.g.*, telecommunications and cable plant, or wireline and wireless networks).

87. *Non-regulated Revenues.* We seek comment on how to ensure that universal service is not inappropriately subsidizing non-regulated services or excessively subsidizing carriers that have the ability to recover additional non-regulated revenues as a result of their deployment of subsidized local loops. We seek comment on the proposal to include all revenues (including broadband revenues) when evaluating the rate of return revenue requirement.

88. *Interstate Common Line Support for Price Cap Converts.* We seek comment on Verizon's proposal that we should phase down, on the same schedule as IAS, the ICLS that has been frozen on a per-line basis for the several carriers that converted to price cap regulation since the adoption of the *CALLS Order.*

89. *Freezing ICLS for Rate-of-Return Companies.* We seek comment on whether, in order to restrain the growth of ICLS in the near term while we undertake more comprehensive universal service reform, we should cap ICLS either per line or per study area for rate-of-return companies on an interim basis (e.g., for two years), to take effect in 2012.

90. *Middle Mile Costs.* We seek comment on whether to modify our universal service rules to provide additional support for middle mile costs, which a number of parties have suggested that middle mile costs are a significant component of the costs of serving customers in rural areas. If we were to do so, how could we ensure that support is provided for middle mile circuits that are offered on rates, terms, and conditions that are just and reasonable? What effect would middle mile support have on incentives for small carriers to continue to seek efficiencies from cooperatively developing regional networks to provide lower cost, higher capacity backhaul capability?

91. *Separations.* We seek comment on how our proposed reforms may affect or be affected by the existing separations process and any future separations reform. We also seek comment on whether the Commission should treat loops used to provide broadband as exclusively interstate.

92. *Accelerated Transition for Rate-of-Return Territories.* Under what circumstances would it be appropriate to accelerate the transition proposed below of rate-of-return territories moving to an incentive regulation framework over the longer term, and adopt such measures in the near term? We also seek comment on whether to allow carriers to opt-in to any of the reforms on an accelerated timeframe. We intend to monitor progress in extending broadband under the near-term reforms discussed above, and we reserve the right to move more quickly to the long-term reforms set forth below.

D. Long-Term Vision for the Connect America Fund

93. In the second stage of our comprehensive reform package, we propose to provide all funding through the Connect American Fund. The CAF would provide ongoing support to maintain and advance broadband across the country in areas that are uneconomic to serve absent such support, with voice service ultimately provided as an application over broadband networks.

1. Supported Providers

94. We seek comment on the National Broadband Plan's recommendation that there should be at most one subsidized provider of broadband service per geographic area. We seek comment on proposals to support both fixed and mobile networks under the CAF, rather than funding only one provider in a given area.

95. To the extent we provide separate, ongoing support for mobility within the CAF, we seek comment on two potential funding options. First, we seek comment on the use of a model to determine high-cost support for wireless carriers. Second, we seek comment on using reverse auctions to determine support for competitive ETCs only.

96. To the extent we create long-term alternatives within CAF for mobile carriers, we propose to limit support one wireless competitive ETC per geographic area. To the extent we were to fund only one mobile wireless provider in a given geographic area, we seek comment on whether it should require that provider to share infrastructure, such as cell towers, with other non-supported wireless providers.

97. We seek comment on whether and how funding only one wireless provider

would impact the Commission's E-rate, Rural Health Care and low-income programs, and whether it should designate "Lifeline Only" ETCs.

98. We seek comment on whether any funding is appropriate in an area if high-quality voice service and broadband Internet access services are provided today by an operator without universal service support.

99. We seek comment on how to address situations where no entity wishes to serve an area, and the relative roles of the Commission and the states in determining which carriers are best able to provide services in unserved areas.

100. To the extent that we ultimately provide ongoing support to only one provider in each geographic area where support is available, we seek comment on whether there should be exceptions, for example, for carriers serving Tribal lands.

2. Sizing the Federal Commitment to Universal Service

101. We seek comment on a proposal to set an overall budget for the CAF such that the sum of the CAF and any existing high-cost programs (however modified in the future) in a given year are equal to the size of the current high-cost program in 2010. Alternatively, if the Commission were to set an overall budget, should it use a different year as the relevant baseline, and under what circumstances (if any) should the Commission adjust the baseline? We also seek comment on whether total funding should be higher or lower. We seek comment on what factors the Commission should consider in sizing the CAF. We seek comment on whether, in determining the size and role of the CAF, it should take into account the cumulative effect of the four support programs, acting together, to achieve the goals of universal service.

3. Alternative Approaches for Targeting and Distribution of CAF Funds

102. We seek comment on alternative approaches for determining ongoing CAF support that ultimately would replace all high-cost funding. In addition we seek comment on whether these proposals would be effective on Tribal lands, given the low telephone and broadband penetration rate and the associated demographic challenges.

a. Competitive Bidding Everywhere

103. We seek comment on using a competitive bidding mechanism to award funding to one provider per geographic area in all areas designated to receive CAF support. This competitive bidding mechanism would be designed to maximize the number of households passed by broadband networks while ensuring that Americans retain access to voice service, without exceeding any defined budget for the CAF.

104. We seek comment on whether it should use bidding credits for bids to provide service exceeding the minimum requirements for features such as higher speed, latency, mobility, or upgrade potential, or to provide preferences to carriers serving Tribal lands or insular areas. We also seek comment on how competitive bidding processes may properly involve Tribal governments and what impact these processes will have on the provision of CAF-supported services on Tribal lands.

105. We also seek comment on alternative competitive bidding mechanisms to maximize the number of households passed by broadband networks while ensuring that voice service remains available everywhere without exceeding any defined budget for the CAF.

106. We seek comment on defining areas for bidding that are aggregations of census blocks.

107. We seek comment on the role of satellite in serving housing units that are most expensive to reach via terrestrial technologies, and whether we could designate ETCs to provide service on a nationwide or multi-state basis. We seek comment on methods for effectively using funding for satellite, and on which approaches might be best suited to making the best use of satellite capacity with competitive bidding. While recognizing that currently unserved areas may be more economically served by satellite, we seek comment on how to ensure that consumers currently served by terrestrial broadband or voice services do not lose access to their terrestrial service.

108. We seek comment on whether we should implement a competitive bidding process for ongoing CAF support on a phased basis, beginning with price cap service areas.

b. Right of First Refusal Everywhere, Followed by Competitive Bidding Where Necessary

109. In the alternative, we seek comment on an approach under which, in each area designated to receive CAF support, the Commission would offer the current COLR for voice services (*i.e.,* most likely a wireline incumbent LEC) model-determined support through a "right of first refusal" (ROFR) to provide both voice and broadband to customers in the area for a specific amount of ongoing support. We also seek comment on alternative ways to conduct the ROFR. For example, should we request that the COLR make an offer of the support level it believe it needs, which we will accept or reject?

110. We would determine the amount of CAF support to be offered to the current COLR using a cost model developed in an open, deliberative, and transparent process with ample opportunity for interested parties to participate and verify model results. We seek comment on using a model that would estimate the costs of providing service over a wireline network or, alternatively, a model that would estimate the costs of using the lowest-cost technology capable of providing the required minimum level of voice and broadband service for each area, which may be wireless in some areas and wireline in others. If it uses a wireline-only model, we seek comment on how it should define forward-looking economic costs of a wireline broadband network and what types of costs it should include. We seek comment on the trade-offs of an engineering cost model approach relative to a regression-based model.

111. We previously sought comment on considering revenues, as well as costs, in determining CAF support. Despite the advantages of including demand-side metrics in the determination of which areas are truly uneconomic to serve, we recognize that there could be difficulties in accurately estimating and modeling revenues, and seek comment on these issues.

112. If the COLR refuses the ROFR, a competitive bidding mechanism could be used to provide ongoing CAF support to at most one provider in any given area. Such a competitive bidding mechanism would simultaneously select the providers of both broadband and voice, or if necessary, voice-only providers that would receive CAF support, and, as with the auction approach above, would seek to maximize the number of households passed by broadband networks while ensuring that consumers retain access to voice service. We also seek comment on using alternative competitive bidding mechanisms and specifically ask whether there is a sequential approach that would first determine the least-cost method for ensuring that voice service remains available everywhere and then maximizes broadband coverage subject to a budget constraint. We seek comment on what factors we should consider when defining the geographic areas for the auction.

113. We seek comment on how support under the existing programs would be transitioned to the CAF under

the ROFR option, and whether a transition is necessary or appropriate in all circumstances.

114. We seek comment on whether it should implement a ROFR followed by competitive bidding on a phased basis, beginning with price cap service areas.

C. Continued Rate-of-Return Reform for Certain Carriers

115. We sought comment above on a package of proposals intended to improve the incentives for rational investment and operation by small companies operating in rural areas. If we find that the near term reforms have adequately improved the incentives for investment and operation by small, rural companies, we could determine that support for these carriers should remain based on reasonable actual investment, rather than a cost model or auction.

116. Accordingly, we seek comment on the need for possible changes to the current rate-of-return system beyond those discussed in the previous section. We seek comment on capping ICLS and whether this would be consistent with rate-of-return regulation or whether we would need to adopt some form of incentive regulation to accomplish the objective of limiting the size of the Fund. We also seek comment on whether the same incentive regulation framework described below in the intercarrier compensation context could also be used to replace the ICLS mechanism. We seek comment on whether more detailed, industry-wide clarifications regarding what should be deemed "used and useful" would be helpful to ensure that excess costs are not recovered through universal service (or carriers' rates). In addition, we seek comment whether it should initiate a proceeding to represcribe the authorized rate of return.

E. Increasing Accountability and Measuring Progress To Ensure Investments Deliver Intended Results

117. *Reporting Requirements.* We propose to require all high-cost funding recipients and CAF recipients to report to USAC on deployment, adoption, and pricing for both their voice and broadband offerings. We propose to require recipients to file with the Commission each year annual reports of their financial condition and operations. We propose that all recipients report intercarrier compensation revenues and expenses.

118. *Internal Controls.* We seek comment on measures to strengthen internal controls in the areas identified for improvement in the GAO high-cost report. We seek comment on the December 2010 USAC Audit Report. We seek comment on whether high-cost and CAF recipients should be subject to additional audit requirements beyond current compliance audits and IPIA audits. We seek comment on how to improve the certification process to make it more meaningful (e.g., requiring additional information from recipients concerning how funds were used and specifically what information should be submitted). We seek comment on how to improve the data validation process to correct weaknesses identified in the GAO high-cost report.

119. *Additional Monitoring Procedures.* We seek comment on what types of procedures we should put in place to ensure that recipients provide services they have committed to provide. We propose to affirmatively confirm, in the field, that recipients have complied with their deployment obligations. We seek comment on whether either state commissions or RUS could play a role in confirming deployment. What information-sharing mechanisms between the Commission and RUS would facilitate our ability to confirm deployment? Should we verify that each and every recipient has fulfilled its obligations, or should we conduct random audits?

120. *Record Retention Requirements.* We seek comment on whether any additional measures are necessary to ensure program participants retain relevant documentation and provide the relevant and complete documentation to auditors upon request.

F. Establishing Clear Performance Goals and Measures for Universal Service

121. We propose that funding of recipients be tied to the following four specific performance goals for the current high-cost program and CAF: (1) To preserve and advance voice service; (2) To increase deployment of modern networks capable of supporting necessary broadband applications as well as voice service; (3) To ensure that rates for broadband service are reasonably comparable in all regions of the nation, and that rates for voice service are reasonably comparable in all regions of the nation; and (4) To limit universal service contribution burden on households. We seek comment on the appropriate output measure and efficiency measure for each goal. We also propose to review annually whether the program is meeting its goals based on the results of the performance measures.

G. Intercarrier Compensation for a Broadband America

122. Intercarrier compensation (ICC) is a system of payments between carriers to compensate each other for the origination, transport and termination of telecommunications traffic. Under the present system, the amounts service providers charge each other for completing such calls can vary considerably depending not on the service provided but on whether a call starts and finishes in the same state, or whether it crosses state lines. To complicate matters further, these charges also can vary based on what technology (*e.g.,* wireline, wireless) is used to make a call. Industry wide, these charges add up to a significant amount of money.

123. The Commission proposes to take action in the near term to reduce inefficiency and waste in the intercarrier compensation system while providing a framework for long-term reform. The same proposed principles that guide universal service reform also inform our intercarrier compensation reform efforts. Specifically, the changes to the intercarrier compensation rules discussed below will: (1) Modernize our rules to advance broadband for all Americans by creating the proper incentives to invest in new technologies and reduce waste and inefficiency by taking steps to curb arbitrage; (2) promote fiscal responsibility; (3) require accountability; and (4) implement market-driven and incentive-based policies.

124. There are four fundamental problems with the current system: (1) The system is based on outdated concepts and a per-minute rate structure from the 1980s that no longer matches industry realities; (2) rates vary based on the type of provider and where a call originates and terminates, even though the function of originating or terminating a call does not change; (3) because most intercarrier compensation rates are set above incremental cost, they create incentives to retain old voice technologies and engage in regulatory arbitrage for profit; and (4) technological advances, including the rise of new modes of communications such as texting, e-mail, and wireless substitution have caused local exchange carriers' compensable minutes to decline, resulting in additional pressures on the system and uncertainty for carriers.

125. Consistent with the Commission's vision to reform universal service and intercarrier compensation, it is important that intercarrier compensation rules create the proper

incentives for carriers to invest in new broadband technologies so that consumers have the opportunity to take full advantage of the new capabilities of this broadband world. The Commission therefore seeks to comprehensively reform the current system to realign incentives and promote investment and innovation in IP networks.

H. Legal Authority To Accomplish Comprehensive Reform

126. The Commission seeks comment on its legal authority to reform intercarrier compensation, and specifically proposes two different transition paths for consideration. The Commission believes it has the authority to adopt either of these transition paths, and implement a transition away from per-minute intercarrier compensation. The Commission concludes that reducing interstate access charges falls well within its general authority to regulate interstate access under sections 201 and 251(g), 47 U.S.C. 201, 251(g).

127. The Commission could apply section 251(b)(5), 47 U.S.C. 251(b)(5), to all telecommunications traffic exchanged with local exchange carriers (LECs), including intrastate and interstate access traffic. Thus, the Commission could bring all telecommunications traffic (intrastate, interstate, reciprocal compensation, and wireless) within the reciprocal compensation framework of section 251(b)(5), 47 U.S.C. 251(b)(5), and determine a methodology that states would use to establish the rate for such traffic. Or, the Commission could maintain the separate regimes of access charges and reciprocal compensation, and set a different methodology for traffic subject to reciprocal compensation. If the Commission moves all traffic within the section 251(b)(5), 47 U.S.C. 251(b)(5), reciprocal compensation framework, the Commission seeks comment on the impact of section 251(f)(2), 47 U.S.C. section 251(f)(2), which permits states to suspend or modify the reciprocal compensation obligations for carriers with less than two percent of the nation's subscriber lines. Doing so could undermine the proposed reforms, particularly if the Commission moves all traffic within the reciprocal compensation framework. The Commission seeks comment on whether it should adopt rules addressing the implications of suspension or modification under section 251(f)(2), 47 U.S.C. 251(f)(2).

128. The Commission also asks about its authority to take action to reduce intercarrier compensation charges paid by or to commercial mobile radio service (CMRS) or wireless providers, including intrastate and interstate access charges (which are referred to collectively as "wireless termination charges"). The Commission seeks comment on its authority under sections 201 and 332, 47 U.S.C. 201, 332, to regulate charges with respect to interstate traffic involving a wireless provider, as well as charges imposed by wireless providers regarding intrastate traffic. In addition, there is support for the proposition that section 332 of the Act, 47 U.S.C. 332, also gives the Commission authority to regulate the intercarrier compensation rates paid by wireless carriers for intrastate traffic—including charges that otherwise would be subject to intrastate access charges.

129. Alternatively, the Commission could adopt a new methodology that would reduce reciprocal compensation charges, but would leave the categories of telecommunications traffic that are currently subject to the reciprocal compensation obligation under section 251(b)(5), 47 U.S.C. 251(b)(5), unchanged. Doing so would leave intrastate and interstate access charges under their current regulatory structures and could permit separate glide paths for different types of traffic.

130. In addition to the Commission's authority to reform interstate access charges, wireless termination charges, and reciprocal compensation to eliminate per-minute rates, the Commission also believes it has authority to establish a transition plan for moving toward that ultimate objective in a manner that will minimize market disruptions. Section 251(g), 47 U.S.C. 251, supports the view that the Commission has authority to adopt a transitional scheme with regard to access charges. The Commission seeks comment on this interpretation of section 251(g).

I. Principles To Guide Intercarrier Compensation Reform

131. The Commission seeks comment on the ultimate end-point once the transition away from per-minute intercarrier compensation rates is completed as well as concepts to guide sustainable reform. These key concepts include: addressing arbitrage and marketplace distortions; cost causation; providing appropriate price signals; and consistency with all-IP broadband networks. The Commission also seeks comment on any additional concepts that should guide the Commission's evaluation of the appropriate end-point for comprehensive intercarrier compensation reform.

132. The Commission seeks comment on possible intercarrier compensation methodologies that it might adopt as an end-point for comprehensive reform. The Commission seeks comment on the merits of a bill-and-keep methodology, including the scope of functions provided by a carrier that should be encompassed by the bill-and-keep framework, and how any bill-and-keep methodology could be crafted in a way that is sufficiently flexible to accommodate evolving network architectures. The Commission also seeks comment on its legal authority to adopt a bill-and-keep methodology either for particular traffic, or for all traffic generally. In addition, the Commission seeks comment on flat intercarrier charge proposals and asks whether they would make policy sense, and be administrable, in the present context as customers transition to broadband? Would such changes facilitate, or hinder, the transition from circuit-switched to IP networks? The Commission also seeks comment on its legal authority to implement a particular flat charge proposal. Finally, the Commission seeks comment on any alternative methodologies consistent with the guiding concepts for long-term reform.

J. Selecting the Path To Modernize Existing Rules and Advance IP Networks

133. The Commission seeks comment on how to begin the transition away from the current per-minute intercarrier compensation rates to facilitate carriers' movement to IP networks. There are multiple the dimensions of the intercarrier compensation reform transition, each of which can be calibrated in a variety of ways. The Commission proposes to work in partnership with the states to reform intercarrier compensation, and seeks comment on two general options for addressing the various elements of the transition.

134. The first approach relies on the Commission and states to act within their existing roles in regulating intercarrier compensation, such that states would remain responsible for reforming intrastate access charges. The Commission would reduce interstate access charges, and adopt a methodology that states would implement to reduce reciprocal compensation rates; but the categories of traffic under the reciprocal compensation framework would remain unchanged. Under this option, the Commission would exercise its broad authority to determine the transition, stages, and future state for reforming the

current interstate access charge rules to eliminate per-minute rates, including any necessary cost or revenue recovery that might be provided through the CAF. Likewise, the Commission would create a new methodology for reciprocal compensation, although the scope of traffic encompassed by the reciprocal compensation framework would not change. In addition to interstate access and reciprocal compensation, there is support for the proposition that section 332, 47 U.S.C. 332, of the Act gives the Commission authority to regulate wireless termination charges—that is, intercarrier compensation charges paid to wireless carriers, or paid by wireless carriers—including charges that otherwise would be subject to intrastate access charges. The Commission also seeks comment on whether the transition for wireless termination charges, if reduced separately, should be subject to distinct transition timing. The Commission seeks comment on the steps it should take to encourage states to reduce intrastate intercarrier compensation rates and how to do so without penalizing states that have already begun the difficult process of reforming intrastate rates or rewarding states that have not yet engaged in reform. For example, should the Commission decline to provide cost recovery for intrastate rate reductions or otherwise limit access to the CAF for states that have not begun intrastate access reform by a specific date? The Commission also seeks comment on how this option can work for states that lack jurisdiction over intrastate access rates. The Commission seeks comment on whether, after initially relying on states to act pursuant to their historical role, it should bring traffic within the reciprocal compensation framework if states fail to act within a specified period of time, such as four years.

135. Under the second approach, the Commission would use the tools provided by sections 251 and 252, 47 U.S.C. 251, 252, to unify all intercarrier rates, including those for intrastate calls, under the reciprocal compensation framework. Under this framework, the Commission would establish a methodology for intercarrier rates, which states then work with the Commission to implement. Under this alternative, the Commission would bring all traffic within the reciprocal compensation framework of section 251(b)(5), 47 U.S.C. 251(b)(5), at the initiation of the transition, and set a glide path to gradually reduce all intercarrier compensation rates to eliminate per-minute charges (including any necessary cost or revenue recovery that might be provided through the CAF). The Commission would adopt a pricing methodology to govern these charges, which ultimately would be implemented by the states. The Commission seeks comment on the relative advantages and disadvantages of this alternative, as well as any implementation considerations, including what revisions would be needed to our interstate access rules applicable to price cap and rate-of-return carriers. The Commission has not previously used the federal universal service fund to offset reforms to intrastate access charges; rather, states have addressed intrastate recovery on a case-by-case basis. The Commission asks whether it has any legal obligation to offset reductions to intrastate revenues, particularly given its commitment to control the size of USF. Even so, the Commission seeks comment on whether it should offset such reductions as a policy matter.

136. Within these approaches, the Commission identifies and develops a specific set of options for commenters to consider regarding the sequencing of reductions in specific rates. The Commission also seeks comment on the appropriate timing of the overall transition and proposes to complete the transition away from per-minute rates before implementing the long-term vision for the CAF, which will ultimately make explicit all subsidies necessary to serve an area (including subsidies that are currently provided implicitly through the intercarrier compensation system). In particular, the Commission seeks comment on whether it should adopt distinct transition timing for price cap versus rate-of-return carriers, and on whether it should cap interstate access rates during the transition. In discussing or proposing particular alternatives, the Commission asks commenters to discuss how particular approaches balance several potentially competing considerations: (a) Harmonizing rates and otherwise reducing arbitrage opportunities; (b) minimizing disruption to service providers, including litigation and revenue uncertainty; and (c) minimizing the impact on consumers and on the Commission's ability to control the size of the universal service fund.

K. Developing a Recovery Mechanism

137. The Commission seeks comment on how to structure any necessary recovery mechanism for providers, including threshold questions of whether its evaluation should be based on a provider's cost of originating, transporting, and terminating a call (*i.e.,* cost recovery) or whether the Commission should focus recovery on replacing reduced intercarrier compensation revenues (i.e., revenue recovery), or some combination thereof. The Commission seeks comment on the objectives for any recovery mechanism and, relatedly, any Commission obligations with regard to recovery from both a legal and policy perspective.

138. In adopting a recovery mechanism the Commission asks, as a threshold matter, whether it should be evaluating carrier costs, carrier revenues, or some combination thereof. What cost standard or cost components should be considered when determining what recovery should be allowed? If the Commission uses a revenue approach for recovery, what should the baseline criteria be for determining whether a carrier qualifies for revenue recovery? With regard to revenue recovery, the Commission recognizes that existing intercarrier compensation revenues may be a significant source of free cash flow and regulated revenues for some carriers, and the Commission requests data to help quantify the impact of intercarrier compensation reform on the industry and consumers. The Commission requests data to analyze existing revenues, assess the magnitude of the revenue reductions resulting from the proposed reforms, and determine the appropriate size and scope of a recovery mechanism.

139. The Commission does not believe that recovery needs to be revenue neutral given that carriers have a variety of regulated (*e.g.,* not only switched but also special access) and non-regulated revenues. The Commission asks whether an adequate opportunity for recovery already exists given the variety of regulated and non-regulated services provided over multi-purpose networks.

140. In evaluating the criteria for recovery, the Commission seeks comment on doing so through reasonable end-user charges and the CAF. The Commission seeks comment on a rate benchmark that would impute benchmark revenues to carriers before becoming eligible for additional revenue recovery. The Commission seeks comment on what elements should be included in a rate benchmark, the appropriate dollar amount for such a benchmark, and whether, and how, it should change over time. The Commission's prior reforms of interstate access charges often allowed carriers to recover at least part of their costs through an increased interstate subscriber line charge or SLC, which is a flat-rated charge that recovers some or all of the interstate portion of the local loop from an end user. The Commission

seeks comment on the role that interstate SLCs should play in intercarrier compensation reform and whether and how the SLC could be used for recovery purposes, including intrastate revenue recovery, either by modifying how the SLC operates or increasing the caps on SLCs.

141. The Commission also recognizes that some high-cost, insular, and Tribal areas may need explicit support to maintain service because there may be no private business case to serve such areas. The Commission seeks comment on how to reform intercarrier compensation and universal service in tandem so that such areas receive any ongoing support necessary to ensure that they continue to receive quality and affordable services, and to ensure that providers serving those areas can continue to advance connectivity where it lags far behind the rest of the nation. As noted above, one of the proposed principles guiding universal service reform is controlling the size of the universal service fund and reducing waste and inefficiency. This proposed principle likewise informs the Commission's intercarrier compensation reforms, and the Commission asks commenters how best to calibrate any intercarrier compensation recovery to be consistent with this principle. The Commission proposes that a provider first seek recovery through reasonable end-user charges, if adopted, before receiving support under the CAF. The Commission seeks comment on what obligations should apply to any universal service funding a carrier receives as part of intercarrier compensation reform. To the extent such funding is provided outside of the CAF, should there be specific public interest conditions and/or reporting tied to receipt of such universal service funds, such as broadband build-out requirements, and if so, what conditions would further the Commission's goals? The Commission also asks whether there is an objective and auditable metric that balances the policy goal of a gradual migration away from the current intercarrier compensation system while not putting undue pressure on a provider's ability to repay debt and make investment in IP facilities that were made in reliance on these revenue flows. To minimize such concerns, the Commission seeks comment on whether it should apply any criteria at the outset, before reform begins, to determine which providers are eligible to receive recovery from the CAF and which providers are not.

142. The Commission also seeks comment on whether any cost or revenue recovery mechanism could provide rate-of-return carriers greater incentives for efficient operation. In light of the relative strengths and weaknesses of rate-of-return regulation and incentive regulation, and given the direction of proposed universal service reforms, we believe that it may be possible to adopt a recovery framework that provides incentives for carriers to operate efficiently, while still providing reasonable certainty and stability. The Commission therefore seeks comment on an alternative framework for determining such recovery, as well as any alternative proposals that commenters would recommend. Specifically, the Commission seeks comment on a possible revenue recovery framework for rate-of-return carriers that departs from traditional rate-of-return principles. The Commission also seeks comment on whether recovery mechanisms under consideration may affect and be affected by the existing separations process and any future separations reform.

L. Reducing Inefficiencies and Waste by Curbing Arbitrage Opportunities

143. The Commission seeks comment on proposals to address the National Broadband Plan recommendation that the Commission adopt interim rules to reduce arbitrage and specifically seeks comment on the applicability of intercarrier compensation to voice over Internet protocol (VoIP), and measures to address phantom traffic and access stimulation.

144. The Commission believes that its proposals to address the treatment of VoIP traffic for purposes of intercarrier compensation and to adopt rules to address phantom traffic and access stimulation will reduce inefficient use of resources and promote investment and innovation. Service providers will benefit from increased certainty and predictability regarding future revenues and reduced billing disputes and litigation, enabling companies to direct capital resources toward broadband investment.

145. The Commission seeks comment on the appropriate intercarrier compensation framework for VoIP traffic. The Commission has never addressed whether interconnected VoIP is subject to intercarrier compensation rules and, if so, the applicable rate for such traffic. Consistent with the National Broadband Plan recommendation, the Commission seeks comment on the appropriate treatment of interconnected VoIP traffic for purposes of intercarrier compensation. The Commission seeks comment on a range of approaches, including how to define the precise nature and timing of particular intercarrier compensation payment obligations. The Commission seeks comment on whether particular reform options would have retroactive effect, and whether such retroactivity would be counterproductive. Under one alternative, the Commission could adopt bill-and-keep for interconnected VoIP traffic. Alternatively, the Commission could determine that interconnected VoIP traffic is subject to intercarrier compensation charges under a regime unique to interconnected VoIP traffic. Further, the Commission could determine that interconnected VoIP traffic is subject to intercarrier compensation—whether standard rates or VoIP-specific rates—but only as of some future date. Another option would be for the Commission to determine that interconnected VoIP traffic is subject to the same intercarrier compensation charges—intrastate access, interstate access, and reciprocal compensation—as other voice telephone service traffic both today, and during any intercarrier compensation reform transition. The Commission also seeks comment on other approaches that have been proposed for addressing the intercarrier compensation obligations associated with VoIP traffic.

146. In addition, the Commission proposes to amend its rules to help ensure that service providers receive sufficient information associated with each call terminated on their networks to identify the originating provider for the call. The Commission's proposal balances a desire to facilitate resolution of billing disputes with a reluctance to regulate in areas where industry resolution has, in many cases, proven effective. The Commission proposes modifying its rules to require that the calling party's telephone number be provided by the originating service provider and to prohibit stripping or altering call signaling information. The proposed modifications would also require all providers involved in transmitting a call from the originating to the terminating provider to transmit, unaltered, information identifying the calling party to the subsequent provider in a call path unless industry standards permit or require altering the information. For service providers using SS7 to pass information about traffic, the proposed rules require originating providers to populate the SS7 calling party number (CPN) field. The Commission recognizes that some service providers do not use SS7 signaling, and instead rely on MF signaling. To the extent that the Commission proposes expanding its rules beyond SS7, it likewise proposes

amending the rules to require service providers using MF signaling to pass CPN information, or the charge number (CN) if it differs from the CPN, in the Multi Frequency Automatic Number Identification (MF ANI) field. Further, the proposed rules would clarify, consistent with industry practice, that populating the SS7 CN field with information other than the charge number to be billed for a call is prohibited. In addition, the proposed rules would prohibit altering or stripping signaling information in the CN as well as CPN field. The proposed rules would apply to all forms of traffic on the PSTN, including jurisdictionally intrastate traffic, as well as traffic originated or transferred using IP protocols.

147. The Commission also seeks comment on specific revisions to its interstate access rules to address access stimulation. In broad terms, access stimulation is an arbitrage scheme employed to take advantage of intercarrier compensation rates by generating elevated traffic volumes to maximize revenues. Access stimulation occurs when, for example, a LEC enters into an arrangement with a provider of high call volume operations such as chat lines, adult entertainment calls, and "free" conference calls. Access stimulation imposes undue costs on consumers, inefficiently diverting the flow of capital away from more productive uses such as broadband deployment, and harms competition.

148. To address access stimulation, the Commission proposes to adopt a trigger based on the existence of access revenue sharing arrangements. Once a particular LEC meets the trigger, it would be subject to modified access charge rules that would vary depending upon the nature of the carrier at issue. To address the possibility of access stimulation activity by a National Exchange Carrier Association (NECA) tariff participant, under the proposed rules, a carrier would lose eligibility to participate in the NECA tariffs 45 days after meeting the trigger, or 45 days after the effective date of this rule if it currently meets the trigger. Such a carrier leaving the NECA tariff would have to file its own tariff(s) for interstate switched access, pursuant to the rules set forth for carriers subject to § 61.38, 47 CFR 61.38. A carrier filing interstate exchange access tariffs pursuant to § 61.38, 47 CFR 61.38, of the Commission's rules would be required to file a new tariff within 45 days of meeting the proposed trigger if the costs and demand arising from the new revenue sharing arrangement had not been reflected in its most recent tariff filing. LECs filing access tariffs pursuant to § 61.39, 47 CFR 61.39, of the Commission's rules currently base their rates on historical costs and demand. Once such a carrier meets the relevant trigger under the proposed rules, it would lose the eligibility to file tariffs based on historical costs under that section. Instead, it would be required to file revised interstate access tariffs using the procedures set forth for carriers subject to § 61.38, 47 CFR 61.38, of the Commission's rules, establishing its rates based on projected costs and demand. The Commission proposes that when competitive LECs meet the trigger, they would be required to benchmark to the rate of the BOC in the state in which the competitive LEC operates, or the independent incumbent LEC with the largest number of access lines in the state if there is no BOC in the state, if they are not already doing so. The competitive LEC would have to file a revised tariff within 45 days of meeting the relevant trigger, or within 45 days of the effective date of the rule if it currently meets the trigger.

149. The Commission further proposes to require LECs that meet the trigger to file tariffs on a notice period other than the statutory seven or fifteen days that would result in deemed lawful treatment. Both competitive LECs and incumbent LECs would be required to file on not less than 16 days' notice. The Commission seeks comment on this analysis of the deemed lawful provision of section 204(a)(3), 47 U.S.C. 204(a)(3), and its proposed filing requirements. Finally, if a LEC failed to comply with the proposed tariffing requirements, the Commission would find such a practice to be an effort to conceal its noncompliance with the substantive rules proposed above that would disqualify the tariff from deemed lawful status. Such incumbent LECs would be subject to refund liability for earnings over the maximum allowable rate-of-return, and competitive LECs would be subject to refund liability for the difference between the rates charged and the rate that would have been charged if the carrier had used the prevailing BOC rate, or the rate of the independent LEC with the largest number of access lines in the state if there is no BOC.

150. The record contains other alternatives for addressing access stimulation, on which the Commission seeks comment, including trigger-based proposals, categorical approaches and other potential actions. The Commission invites parties to quantify the extent of traffic stimulation involving reciprocal compensation rates between CMRS providers and competitive LECs, and the steps that could be taken to address such stimulation activity. The Commission invites parties to comment on these proposals as well as on other regulatory and policy implications of access stimulation.

151. Finally, the Commission seeks comment on whether the actions it proposes in this Notice should encourage incumbent LECs to move to IP-to-IP interconnection. The Commission seeks comment on several issues related to intercarrier compensation reform, including other steps we can take to promote IP-to-IP interconnection, network edges and points of interconnection, transiting, and disputes that have arisen over other technical issues in intercarrier compensation rules and carrier practices. For each of these issues, the Commission asks whether it should address the issue as part of comprehensive intercarrier compensation reform, and if so, at what stage of reform it should be addressed, and what actions the Commission should take. The Commission invites parties to refresh the record in this proceeding regarding: (1) Interpretation of the intraMTA rule; (2) disputes regarding rating and routing of traffic; and (3) the appropriate intercarrier compensation regime applicable to virtual central office code calls to distant ISPs. The Commission also seeks comment on whether there are any other outstanding technical issues related to intercarrier compensation reform that the Commission should address, and, if so, when and how the Commission should address them.

II. Procedural Matters

A. Initial Regulatory Flexibility Analysis

Initial Regulatory Flexibility Analysis

152. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

153. The NPRM seeks comment on a variety of issues relating to comprehensive reform of universal service and intercarrier compensation. As discussed in the NPRM, the Commission believes that such reform will eliminate waste and inefficiency while modernizing and reorienting these programs on a fiscally responsible path to extending the benefits of broadband throughout America. Bringing robust, affordable broadband to all Americans is the infrastructure challenge of the 21st century. To meet this challenge, the NPRM proposes to fundamentally modernize the Commission's Universal Service Fund (USF) and intercarrier compensation system, eliminating waste and inefficiency.

154. Millions of Americans live in areas where they cannot enjoy the economic, social and civic benefits of broadband. Meanwhile, fundamental inefficiencies and waste affect both USF and intercarrier compensation. In many areas of the country, USF does not target funding, subsidizes a competitor to a voice and broadband provider that offers service without government assistance, or supports several voice networks in a single area. Similarly, inefficient intercarrier compensation rules have led to wasteful arbitrage opportunities like phantom traffic and access stimulation. We face these problems because our universal service rules and our intercarrier compensation system, designed for 20th century networks and market dynamics, have not been comprehensively reassessed in more than a decade, even though the communications landscape has changed dramatically. Due to the interrelationship between USF and intercarrier compensation, and the importance of both to the nation's broadband goals, reform of the two programs must be tackled together.

155. In the NPRM, the Commission proposes to transform the existing high-cost program—the component of USF directed toward high-cost, rural, and insular areas—into a new, more efficient, broadband-focused Connect America Fund (CAF).

156. In the first stage of reform, beginning in 2012, the Commission proposes to update the public interest obligations that pertain to current and future recipients. The Commission also proposes to transition funds from less efficient uses to more efficient uses. Over a period of a few years, the Commission proposes to phase out Interstate Access Support (IAS) and funding for competitive eligible telecommunications carriers (ETCs), subject to possible exceptions. In addition, the Commission seeks comment on a set of proposals to eliminate waste and inefficiency, improve incentives for rational investment and operation by companies operating in rural areas, and set rate-of-return companies on the path to incentive-based regulation. Specifically, the Commission seeks comment on: (a) Establishing benchmarks for reimbursable capital and operating costs; (b) modifying high-cost loop support reimbursement percentages and eliminate loop support known as "safety net"; (c) eliminating local switching support as a separate funding mechanism; (d) eliminating the reimbursement of corporate operations expenses; and (e) capping total high-cost support at $3,000 per line per year for carriers operating in the continental United States.

157. The Commission also proposes to create a CAF program that would immediately make available support for broadband in unserved areas and to test the use of a competitive funding process. The Commission seeks comment on this proposal, including proposed CAF eligibility requirements, the proposed framework for a CAF auction, and post-auction process, administration, and management and oversight of the CAF program.

158. In the second stage, the Commission proposes to transition all remaining high-cost programs to the CAF, which would provide ongoing support to maintain and advance broadband across the country in areas that are uneconomic to serve absent such support, with voice service ultimately provided as an application over broadband networks. The Commission seeks comment on options for determining support levels under the CAF, including the use of a model and/or competitive bidding. The Commission also seeks comment on an alternative that would limit the full transition to a subset of geographic areas, such as those served by price cap companies, while continuing to provide ongoing support based on reasonable actual investment to smaller, rate-of-return companies. The Commission also seeks comment on whether USF should support mobile voice and/or mobile broadband service in all areas of the country.

159. The Commission further proposes a variety of measures, including establishing performance goals and improving reporting requirements to increase accountability and better track performance of the Fund as a whole.

160. The NPRM also seeks comment on proposals to comprehensively reform intercarrier compensation in order to bring the benefits of broadband to all Americans. The current intercarrier compensation system's distorted incentives and wasted resources are a roadblock to a world-leading broadband ecosystem. Reform of the current morass of regulatory distinctions and access charges will help to modernize the Commission's rules to advance broadband, reduce waste and inefficiency, increase accountability, and lead to market-driven outcomes that promote investment.

161. At the outset, the NPRM seeks comment on the Commission's authority to pursue intercarrier compensation reform, identifies certain goals of intercarrier compensation reform, and seeks comment on how possible intercarrier compensation rate methodologies would advance those goals. The NPRM also seeks comment on the appropriate transition away from the current per-minute intercarrier compensation rates, including two possible approaches. One approach relies on the Commission and states to act within their existing roles in regulating intercarrier compensation, and the other follows the federal and state roles established for reciprocal compensation under the 1996 Act. Within these approaches, the NPRM identifies a range of possible outcomes for the sequencing of reductions for specific rates and seeks comment on other implementation details, including the timing of any transition. In addition, the NPRM seeks comment on how the Commission could provide a recovery mechanism as part of any comprehensive reform and how to structure recovery with the appropriate incentives to accelerate the migration to IP broadband networks.

162. The NPRM also seeks comment on rules intended to reduce incentives for wasteful arbitrage. First, to address existing uncertainty, the NPRM invites comment on the appropriate intercarrier compensation framework for VoIP traffic. Second, the NPRM seeks comment on: (1) Amendments to the Commission's call signaling rules to address phantom traffic; and (2) amendments to the Commission's interstate access rules to address access stimulation and to ensure that rates remain just and reasonable. Finally, the NPRM seeks comment on other issues related to intercarrier compensation reform including network edges and points of interconnection, transiting, and disputes that have arisen over

technical issues in intercarrier compensation rules and carrier practices.

2. Legal Basis

163. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 201 through 206, 214, 218 through 220, 251, 252, 254, 256, 303(r), 332, 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201 through 206, 214, 218 through 220, 251, 252, 254, 256 303(r), 332, 403 and 706 and §§ 1.1 and 1.1421 of the Commission's rules, 47 CFR 1.1, 1.421.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

164. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

165. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

166. *Wired Telecommunications Carriers. The* SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

167. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM.

168. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the NPRM.

169. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

170. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

171. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

172. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

173. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are

engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

174. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

175. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

176. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

177. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

178. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

179. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses. This auction, which was designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified

for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

180. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

181. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

182. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the NPRM.

183. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 15978, April 3, 1997, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

184. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

185. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

186. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these

providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

187. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

188. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the NPRM.

189. *700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses, identified as "entrepreneur" and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

190. In 2007, the Commission adopted the *700 MHz Second Report and Order,* 72 FR 48814, August 24, 2007, which revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission conducted Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round (SMR) auction format for the A, B, D, and E Block licenses and an SMR auction design with hierarchical package bidding (HPB) for the C Block licenses. For Auction 73, a bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent

discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. At the conclusion of Auction 73, 36 winning bidders identifying themselves as very small businesses won 330 of the 1,090 licenses, and 20 winning bidders identifying themselves as a small business won 49 of the 1,090 licenses. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.

191. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* 65 FR 17594, April 4, 2000, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

192. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

193. *Private Land Mobile Radio ("PLMR").* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

194. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

195. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

196. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the NPRM.

197. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards and may be affected by rules adopted pursuant to the NPRM.

198. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business

specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

199. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for Cellular and Other Wireless Telecommunications services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

200. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the NPRM.

201. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

202. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* 64 FR 59656, November 3, 1999, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

203. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

204. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a "small business" as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a "very small business" as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

205. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order, 70 FR 24712, May 11, 2005,* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

206. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity.

Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

207. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

208. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of "Satellite Telecommunications" and "Other Telecommunications." Under the "Satellite Telecommunications" category, a business is considered small if it had $15 million or less in average annual receipts. Under the "Other Telecommunications" category, a business is considered small if it had $25 million or less in average annual receipts.

209. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the NPRM.

210. The second category of Other Telecommunications "primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

211. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the NPRM.

212. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

213. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

214. *Open Video Services.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the NPRM. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications

or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

215. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

216. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that "primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals)." The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

217. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily * * * provid[e] infrastructure for hosting or data processing services." The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

218. *All Other Information Services.* The Census Bureau defines this industry as including "establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals)." Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

219. In this NPRM, the Commission seeks public comment on comprehensive universal service and intercarrier compensation reform. The transition to reformed universal service programs and new intercarrier compensation rules could affect all carriers, including small entities, and may include new administrative processes. In proposing these reforms, the Commission seeks comment on various reporting, recordkeeping, and other compliance requirements that may apply to all carriers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rule, including data quantifying the extent of those costs or burdens.

220. In this NPRM, the Commission proposes annual data collection from high-cost and, ultimately, CAF recipients. The Commission also proposes to require all such recipients to report on deployment, adoption and pricing for their voice and broadband offerings.

221. The Commission also proposes to require recipients to file an annual report of their financial condition and operations, which is audited and certified by an independent certified public accountant, and accompanied by a report of such audit. The report shall include, at a minimum, balance sheets, income statements, statements of cash flow, and notes to the financial statements, if available. The Commission further proposes that the information included in these disclosures be made available to the public to promote increased transparency and efficiency. To minimize the cost and reporting burden on carriers, the Commission proposes to allow those carriers that are required to file financial reports with the Securities and Exchange Commission or the Rural Utilities Service to satisfy this requirement by providing electronic copies of the annual reports filed with those agencies to the Commission so long as the reports meet the minimum information requirements imposed by the Commission's rules and are filed with the Commission by the deadline imposed in accordance with this requirement. The Commission also proposes that recipients must test their broadband networks for specific metrics on a periodic basis and report the results to USAC. The results would be subject to an audit.

222. The Commission further seeks comment on any additional reporting requirements that should be required of high-cost or CAF recipients. For example, should there be additional reporting requirements for providers serving Tribal lands and Native communities? The Commission also seeks comment on how to transition from the current reporting requirements to more comprehensive reporting requirements that would apply to all high-cost and CAF recipients.

223. The Commission seeks comment on ways to target support more directly to areas that are uneconomic to serve, including by targeting support through disaggregation within study areas. We propose two options for disaggregation that may require recordkeeping or reporting: either a carrier may disaggregate in accordance with a plan approved by the appropriate regulatory authority, or by self-certifying to the appropriate regulatory authority a disaggregation plan.

224. The Commission also proposes the creation of a CAF program, which includes the establishment of performance coverage requirements and possible requirements applicable to parties receiving support to demonstrate coverage and compliance with other possible metrics. The Commission proposes that all recipients of CAF funding comply with audit and recordkeeping requirements. The Commission proposes that parties seeking to participate in a CAF auction and receive support to meet a variety of eligibility criteria, which may involve reporting, recordkeeping or other compliance requirements. Further, as part of a CAF auction, we propose an auction process that would require the completion of a pre-auction "short-form" application by all bidders and a post-auction "long-form application" by winning bidders. Finally, in the NPRM we seek comment on other potential requirements, including requirements designed to ensure guarantee of performance for winning bidders as well as certification requirements necessary to receive CAF support.

225. Further, the Commission proposes to improve internal control mechanisms to apply to the high-cost program and, ultimately, to the CAF. We seek comment on improvements that can be made the section 254(e) certification process. We also seek comment on whether high-cost universal support recipients should be subject to additional audit requirements and data validation processes. We seek comment on whether to modify or adopt additional record retention documents as well as performance coverage requirements.

226. In the NPRM, the Commission seeks comment and data on issues that must be addressed to comprehensively reform intercarrier compensation. These issues include the appropriate path or transition to modernize the existing rules, the ultimate end point for intercarrier compensation reform, if and how carriers should be allowed to recover costs or revenues that might be reduced by any intercarrier compensation reforms, and data to analyze the effects of proposed reforms and need for revenue recovery.

227. Compliance with a transition to a new intercarrier compensation system may impact some small entities and may include new or reduced administrative processes. For carriers that may be affected, obligations may include certain reporting and recordkeeping requirements to determine and establish their eligibility to receive recovery from other sources as intercarrier compensation rates are reduced. Additionally, these carriers may need to modify some administrative processes relating to the billing and collection of intercarrier compensation in order to comply with any new or revised rules the Commission adopts as a result of the NPRM.

228. Proposed modifications to the rules to address arbitrage opportunities also will affect certain carriers, potentially including small entities. To the extent that the Commission addresses the intercarrier compensation framework applicable to interconnected VoIP, providers might be required to modify or adopt administrative, recordkeeping, or other processes to implement that framework. Moreover, the NPRM considers possible rule modifications to require that call signaling information is passed completely and accurately to terminating service providers, which may require service providers to modify some administrative processes. Further, possible rule modifications to address access stimulation, if adopted, may affect certain carriers. For example, carriers that meet the revenue sharing trigger or other thresholds proposed in the NPRM may be subject to revised tariff filing or other requirements.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

229. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

230. The NPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the NPRM.

231. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

232. In the NPRM, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. Specifically, the Commission seeks comment on whether certain public interest obligations should be different for small entities. The Commission also seeks comment on whether there should be an exception to the proposed phase out of support for competitive ETCs, which could be based, in whole or in part, on the size of the provider. And the Commission seeks comment on whether to provide different transition periods or different reform path for particular classes of carriers.

233. The Commission also seeks comment on the appropriate sequence and timing of intercarrier rate reductions and alternative intercarrier compensation methodologies that might be adopted as an end-point for reform, including bill-and-keep, flat-rated intercarrier charges, or other proposals. The Commission seeks comment on the impact to small entities of reduced intercarrier rates under intercarrier compensation reform transition options, including whether a different transition period might be appropriate for particular classes of carriers.

234. The NPRM also seeks comment on the appropriate standard for recovery and on whether reductions in intercarrier compensation rates would impact all carriers in a similar manner. The Commission asks if the recovery approach adopted should be different depending on the type of carrier or regulation. The Commission also invites comment on specific recovery considerations for rate-of-return carriers and whether any cost or revenue recovery mechanism could provide rate-of-return carriers with greater incentives for efficient operation.

235. Finally, the Commission seeks comment on whether separate consideration for small entities is necessary or appropriate for each of the following issues discussed in the NPRM: The potential impact of rules governing interconnected VoIP traffic; the potential impact of rules related to

call signaling; the potential impact of rules relating to access stimulation, including revised tariff-filing requirements; the potential impact of rules relating to interconnection and related issues.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

236. None.

B. Paperwork Reduction Act Analysis

237. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Ex Parte Presentations

238. This NPRM will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

D. Filing Requirements

239. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments. Comments on the proposed rules are due on or before April 18, 2011 and reply comments are due on or before May 23, 2011. Joint Board comments are due on or before May 2, 2011. Comments on Section XV are due on or before April 1, 2011 and reply comments on Section XV are due on or before April 18, 2011. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 2, 2011. All filings should refer to CC Docket No 01–92, WC Docket Nos. 10–90, 07–135, and 05–337 and GN Docket No. 09–51. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform systems of accounts.

47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications common carriers, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 36, 54, 61, 64, and 69 to read as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154 (i) and (j), 205, 221(c), 254, 403 and 410.

2. Amend § 36.605 by revising paragraph (b) to read as follows:

§ 36.605 Calculation of safety net additive.

* * * * *

(b) *Calculation of safety net additive support:* Until December 31, 2011, safety net additive support is equal to the amount of capped support calculated pursuant to this subpart F in the qualifying year minus the amount of support in the year prior to qualifying for support subtracted from the difference between the uncapped expense adjustment for the study area in the qualifying year minus the uncapped expense adjustment in the year prior to qualifying for support as shown in the following equation: Safety net additive support = (Uncapped support in the qualifying year − Uncapped support in the base year) − (Capped support in the qualifying year − Amount of support received in the base year). For calendar year 2012 payments, the safety net additive shall be 75% of the amount calculated pursuant to this section. For calendar year 2013 payments, the safety net additive shall be 50% of the amount calculated pursuant to this section. For calendar year 2014 payments, the safety net additive shall be 25% of the amount calculated pursuant to this section. Beginning January 1, 2015, no carrier shall receive the safety net additive.

* * * * *

3. Amend § 36.621 by revising the last sentence of paragraph (a)(4) introductory text and adding three additional sentences at the end of paragraph (a)(4) introductory text to read as follows:

§ 36.621 Study area total unseparated loop cost.

(a) * * *

(4) * * * Total Corporate Operations Expense, for purposes of calculating universal service support payments beginning July 1, 2001 and ending December 31, 2011, shall be limited to the lesser of § 36.621(a)(4)(i) or (ii). For purposes of calculating universal service support payments in calendar year 2012, total corporate operations expense shall be limited to the lesser of § 36.621(a)(4)(i) or (ii) then multiplied by 67%. For purposes of calculating universal service support payments in calendar year 2013, total corporate operations expense shall be limited to the lesser of § 36.621(a)(4)(i) or (ii) then multiplied by 33%. Beginning January 1, 2014, Corporate Operations Expense shall no longer be eligible for purposes of calculating universal service payments.

* * * * *

4. Amend § 36.631 by revising paragraphs (c)(1) and (2) and by removing and reserving paragraph (d) to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(c) * * *

(1) Until December 31, 2011, sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area. Beginning January 1, 2012, fifty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area; and

(2) Until December 31, 2011, seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area. Beginning January 1, 2012, sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area.

* * * * *

PART 54—UNIVERSAL SERVICE

5. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

6. Amend § 54.301 by adding two sentences at the end of paragraph (a)(1) and by adding three sentences to the beginning of paragraph (c)(5) to read as follows:

§ 54.301 Local switching support.

(a) * * *

(1) * * * Subject to specified exceptions, for calendar year 2012 payments, local switching support shall be 67% of the amount calculated pursuant to this section and for calendar year 2013 payments, local switching support shall be 33% of the amount calculated pursuant to this section. Beginning January 1, 2014, no carrier shall receive local switching support, subject to specified exceptions.

* * * * *

(c) * * *

(5) For calendar year 2012, for purposes of calculating local switching support, the amount of corporate operations expense allocated by this factor shall be multiplied by 67%. For calendar year 2013, for purposes of calculating local switching support, the amount of corporate operations expense allocated by this factor shall be multiplied by 33%. Beginning January 1, 2014, corporate operations expense shall no longer be eligible for purposes of calculating local switching support.

* * *

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7. Add § 54.302 to subpart D to read as follows:

§ 54.302 Annual per-line limit on universal service support.

Subject to specified exceptions, beginning January 1, 2012, each study area in the continental United States shall be limited to $3,000 per-line annually in universal service support. For purposes of this section, universal service support is defined as the sum of the amounts calculated pursuant to §§ 36.605, 36.631 of this chapter and §§ 54.301, 54.305, 54.309, 54.800 through 808 and 54.901 through 904. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to § 36.611(h) of this chapter. The fund administrator, in order to limit support to $3,000 for affected carriers, shall reduce safety net additive support, high-cost loop support, local switching support, safety valve support, forward-looking support, interstate access support, and interstate common line support in proportion to the relative amounts of each support mechanism to total support the study area would receive absent such limitation.

8. Amend § 54.305 by adding a sentence at the end of paragraph (a) to read as follows:

§ 54.305 Sale or transfer of exchanges.

(a) * * * Five years after approval of the relevant study area waiver for the sale or transfer of exchanges, the provisions of this section are no longer applicable to acquired exchanges, if the acquired exchanges have more than 30% of housing units unserved by broadband, as indicated on the National Telecommunications and Information Administration's broadband map and/or the Commission's Form 477 data collection.

* * * * *

9. Amend § 54.307 by revising paragraph (a) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) *Calculation of support.* A competitive eligible telecommunications carrier shall receive universal service support to the extent that the competitive eligible telecommunications carrier captures the subscriber lines of an incumbent local exchange carrier (LEC) or serves new subscriber lines in the incumbent LEC's service area. Subject to specified exceptions beginning January 1, 2016, no competitive eligible telecommunications carrier shall be eligible to receive universal service support on the basis of this section. On or after January 1, 2012, competitive eligible telecommunications carriers shall be eligible to receive universal service support pursuant to subpart L and subpart M of this part.

* * * * *

10. Amend § 54.315 by adding a sentence at the end of paragraph (a) to read as follows:

§ 54.315 Disaggregation and targeting of high-cost support.

(a) * * * On or before [60 days from effective date of adoption of order], all rural incumbent local exchange carriers and rate-of-return carriers for which high-cost universal service support pursuant to §§ 54.301, 54.303, and/or 54.305, subpart K, and/or subpart F of Part 36 is available, that previously selected the disaggregation path as described in paragraph (b) of this section, must select a disaggregation path as described in paragraph (c) or (d) of this section.

* * * * *

11. Amend § 54.807 by revising paragraph (a) to read as follows:

§ 54.807 Interstate access universal service support.

(a) Each Eligible Telecommunications Carrier (ETC) that provides supported service within the study area of a price cap local exchange carrier shall receive Interstate Access Universal Service Support for each line that it serves within that study area. Subject to specified exceptions, eligible telecommunications carriers shall be eligible to receive Interstate Access Support as follows:

(1) During the 2012 calendar year, the interstate access support available to incumbent local exchange carriers and competitive eligible telecommunications carriers shall be capped at 50 percent of the amount paid in 2011, excluding amounts paid during

2011 for true-ups or revisions for years prior to 2011. Interstate access support payments shall be reduced, if necessary, by multiplying each incumbent local exchange carrier's or competitive eligible telecommunications carrier's support by the percentage factor necessary to reduce the aggregate interstate access support to the capped amounts.

(2) Interstate access support shall be eliminated beginning January 1, 2013, and no eligible telecommunications carrier shall receive interstate access support, except as for true-ups and revisions related to prior periods.

* * * * *

12. Amend § 54.901 by adding paragraph (c) to read as follows:

§ 54.901 Calculation of Interstate Common Line Support.

* * * * *

(c) For calendar year 2012, for purposes of calculating Interstate Common Line Support, corporate operations expense allocated to the Common Line Revenue Requirement, pursuant to § 69.409 of this chapter, shall be reduced by multiplying the corporate operations expense allocated by 67%. For calendar year 2013, for purposes of calculating Interstate Common Line Support, corporate operations expense allocated to the Common Line Revenue Requirement, pursuant to § 69.409 of this chapter, shall be reduced by multiplying the corporate operations expense allocated by 33%. Beginning January 1, 2014, corporate operations expense shall no longer be eligible for purposes of calculating Interstate Common Line Support.

13. Add subpart M to Part 54 to read as follows:

Subpart M—Competitive Bidding Program

Sec.
54.1001 Purpose.
54.1002 Areas eligible for support.
54.1003 Provider eligibility.
54.1004 Short-form applications for participation in competitive bidding to apply for support.
54.1005 Competitive bidding process.
54.1006 Communications prohibited during the competitive bidding process.
54.1007 Long-form application process for winning bidders.
54.1008 Default.
54.1009 Public interest obligations.
54.1010 Disbursements.
54.1011 Oversight.

Subpart M—Competitive Bidding Program

§ 54.1001 Purpose.

This subpart sets forth procedures for competitive bidding to determine the recipients of universal service support available through the first phase of the Connect America Fund and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

§ 54.1002 Areas eligible for support.

(a) Support may be made available for specific unserved areas identified by the Commission.

(b) The Commission may assign relative coverage units to each identified geographic area in connection with conducting competitive bidding and disbursing support.

§ 54.1003 Provider eligibility.

(a) A party applying for support must be designated an Eligible Telecommunications Carrier, or have applied for a designation as an Eligible Telecommunications Carrier, for an area that includes unserved area(s) with respect to which it applies for support.

(b) A party applying for support must, if specified and required by the Commission, hold any necessary authority or conditional authorization to provide voice service in the unserved area with respect to which it applies for support.

§ 54.1004 Short-form applications for participation in competitive bidding to apply for support.

(a) *Public notice of the application process.* When conducting competitive bidding pursuant to this subpart, the Commission shall by Public Notice announce the dates and procedures for submitting applications to participate in related competitive bidding.

(b) *Application contents.* All parties submitting applications to participate in competitive bidding pursuant to this subpart must provide the following information in their application in a form acceptable to the Commission.

(1) The identity of the applicant, *i.e.,* the party seeking support, including any information that the Commission may require regarding parties that have an ownership or other interest in the applicant.

(2) The identities of up to three individuals designated to bid on behalf of the applicant.

(3) The identities of all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding.

(4) Certification that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding.

(5) Certification that the applicant, any party capable of controlling the applicant, and any related party with information regarding the applicant's planned or actual participation in the competitive bidding will not communicate any information regarding the applicant's planned or actual participation in the competitive bidding to any other party with an interest in any other applicant until after the post-auction deadline for winning bidders to submit long-form applications for support, unless the Commission by Public Notice announces a different deadline.

(6) Certification that the applicant is in compliance with any and all statutory or regulatory requirements for receiving universal service support. The Commission may elect to accept as sufficient the applicant's demonstration in its application that the applicant will be in compliance at a point in time designated by the Commission.

(7) Such additional information as the Commission may require, including but not limited to applicants certifying its qualifications to receive support, providing its eligible telecommunications carrier designation status and information regarding its authorization to provide service, and specifying the unserved area applicant seeks to provide service to.

(c) *Demonstration of financial qualification.* The Commission may require as a prerequisite to participating in competitive bidding pursuant to this subpart that applicants demonstrate their financial qualifications or commitment to provide required services by depositing funds, posting performance bonds, or any other means the Commission considers appropriate.

(d) *Application processing.* (1) Commission staff shall review any application submitted during the period for submission and before the deadline for submission for completeness and compliance with the Commission's rules. No applications submitted at any other time shall be reviewed or considered.

(2) The Commission shall not permit any applicant to participate in competitive bidding pursuant to this subpart to do so if, as of the deadline for submitting applications, the application does not adequately identify the applicant or does not include required certifications.

(3) The Commission shall not permit any applicant to participate in competitive bidding pursuant to this subpart to do so if, as of the applicable deadline, the applicant has not provided any required demonstration of financial qualifications that the Commission has required.

(4) The Commission shall not permit applicants to make any major modifications to their applications after the deadline for submitting applications. The Commission shall not permit applicants to participate in the competitive bidding if their applications require major modifications to be made after deadline for submitting applications. Major modifications include but are not limited to any changes to the identity of the applicant or to the certifications required in the application.

(5) The Commission may permit applicants to make minor modifications to their applications after the deadline for submitting applications. The Commission may establish deadlines for making some or all permissible modifications to applications and may permit some or all permissible modifications to be made at any time. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(6) After receipt and review of the applications, the Commission shall by Public Notice identify all applicants that may participate in an auction conducted pursuant to this subpart.

§ 54.1005 Competitive bidding process.

(a) *Public notice of competitive bidding procedures.* The Commission shall by public notice establish detailed competitive bidding procedures any time it conducts competitive bidding pursuant to this subpart.

(b) *Competitive bidding procedures.* The Commission may conduct competitive bidding pursuant to this subpart using any of the procedures described below.

(1) The Commission may establish procedures for limiting the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process. The Commission may by Public Notice establish procedures for parties to report the receipt of non-public information regarding applicants, applications, and bids during any time the Commission has limited the public availability of the information during the competitive bidding process.

(2) The Commission may sequence or group multiple items subject to bidding, such as multiple or overlapping self-defined geographic areas eligible for support, and may conduct bidding either sequentially or simultaneously.

(3) The Commission may establish procedures for bidding on individual items and/or for combinations or packages of items.

(4) The Commission may establish reserve prices, and/or lowest or maximum acceptable per-unit bid amounts, either for discrete items or combinations or packages of items, which may be made public or kept non-public during a period of time covering the competitive bidding process.

(5) The Commission may prescribe the form and time for submitting bids and may require that bids be submitted remotely, by telephonic or electronic transmission, or in person.

(6) The Commission may prescribe the number of rounds during which bids may be submitted, whether one or more, and may establish procedures for determining when no more bids will be accepted.

(7) The Commission may require a minimum level of bidding activity.

(8) The Commission may establish acceptable bid amounts at the opening of and over the course of bidding.

(9) The Commission may establish procedures for ranking and comparing bids and specific performance requirements, if any, and comparing and determining the winning bidders that may become recipients of universal service support and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

(10) The Commission may identify winning bidder(s) for any remaining amounts of support by considering bids in order of per-unit bid amount. The Commission may skip bids that would require more support than is available, or at its discretion, not identify winning bidder(s) for the remaining funds and instead offer such funds in a subsequent auction.

(11) The Commission may permit bidders the limited opportunity to withdraw bids and, if so, establish procedures for doing so.

(12) The Commission may delay, suspend or cancel bidding before or after bidding begins for any reason that affects the fair and efficient conduct of the bidding, including natural disasters, technical failures, administrative necessity or any other reason.

(c) *Apportioning package bids.* If the Commission elects to accept bids for combinations or packages of items, the Commission may provide a methodology for apportioning such bids to discrete items within the combination or package when a discrete bid on an item is required to implement any Commission rule.

(d) *Public notice of competitive bidding results.* After the conclusion of competitive bidding, the Commission shall by public notice identify the winning bidders that may become recipients of universal service support and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

§ 54.1006 Communications prohibited during the competitive bidding process.

(a) *Prohibited communications.* Each applicant, each party capable of controlling an applicant, and each party related to an applicant with information regarding an applicant's planned or actual participation in the competitive bidding is prohibited from communicating any information regarding the applicant's planned or actual participation in the competitive bidding to any other party with an interest in any other applicant to participate in the competitive bidding from the deadline for submitting applications to participate in the competitive bidding until after the post-auction deadline for winning bidders to submit long-form applications for support, unless the Commission by Public Notice announces a different deadline.

(b) *Duty to report potentially prohibited communications.* Any applicant or related party receiving communications that may be prohibited under this rule shall report the receipt of such communications to the Commission.

(c) *Procedures for reporting potentially prohibited communications.* The Commission may by Public Notice establish procedures for parties to report the receipt of communications that may be prohibited under this rule.

§ 54.1007 Long-form application process for winning bidders.

(a) *Application deadline.* Unless otherwise provided by public notice, winning bidders for support must file a long-form application for support within 10 business days of the public notice identifying them as eligible to apply.

(b) *Application contents.* (1) Identification of the party seeking the support.

(2) Information the Commission may require to demonstrate that the applicant is legally, technically and financially qualified to receive support, including but not limited to proof of its designation as an Eligible Telecommunications Carrier for an area that includes the area with respect to which support is requested.

(3) Disclosure of all parties with a controlling interest in the applicant and any party with a greater than ten percent

ownership interest in the applicant, whether held directly or indirectly.

(4) A detailed project description that identifies the unserved area applicant seeks to serve, describes how the applicant will meet public interest obligations and performance requirements, describes the anticipated network, identifies the proposed technology or technologies, demonstrates that the project is technically feasible, and describes each specific development phase of the project, *e.g.,* network design phase, construction period, deployment and maintenance period.

(5) A detailed project schedule that identifies the following project milestones: start and end date for network design; start and end date for drafting and posting requests for proposal; start and end date for selecting vendors and negotiating contracts; start date for commencing construction; end date for completing construction; and dates by which it will meet applicable requirements to receive the installments of support for which it subsequently qualifies.

(6) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received and that the applicant will comply with all program requirements.

(7) Any guarantee of performance that the Commission may require by Public Notice or other proceedings, including but not limited to, letters of credit, performance bonds, or demonstration of financial resources.

(c) *Application processing.* (1) No application will be considered unless it has been submitted during the period specified by Public Notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(2) The Commission shall deny any application that, as of the submission deadline, either does not adequately identify the party seeking support or does not include required certifications.

(3) After reviewing applications submitted, the Commission may afford an opportunity for parties to make minor modifications to amend applications or correct defects noted by the applicant, the Commission, or other parties. Minor modifications include changing the individuals authorized to bid for the applicant, correcting typographical errors in the application, and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(4) The Commission shall deny all applications to which major modifications are made after the deadline for submitting applications. Major modifications include any changes to the identity of the applicant or to the certifications required in the application.

(5) After receipt and review of the applications, the Commission shall release a Public Notice identifying all applications that have been granted and the parties that are eligible to receive support.

§ 54.1008 Default.

Winning bidders that fail to substantially comply with the requirements for filing the post-auction long-form application by the applicable deadline shall be in default on their bids and subject to such measures as the Commission may provide, including but not limited to disqualification from future competitive bidding pursuant to this subpart.

§ 54.1009 Public interest obligations.

(a) Applicants receiving support under this section must perform the following under their public interest obligations:

(1) *Speed.* Applicants must provide broadband speeds of 4 Mbps downstream (actual) and 1 Mbps upstream (actual), subject to specified exceptions.

(2) *Coverage requirement.* Applicants must comply with the coverage requirement established by the Commission and must comply with all reasonable requests for service from end users in its coverage area.

(3) *Deployment and duration of obligation.* Applicants must complete deployment within three years after receiving support and must fulfill provider obligations under this section for five years upon completion of deployment.

§ 54.1010 Disbursements.

(a) Support shall be disbursed to recipients in three stages, as follows:

(1) One-half of the total possible support, if coverage were to be extended to 100 percent of the units in the portion of the geographic area deemed unserved, when a recipient's long-form application for support with respect to a specific area is deemed granted.

(2) One-quarter of the total possible support with respect to a specific geographic area when a recipient files a report demonstrating coverage of 50 percent of the units in the portion of that area previously deemed unserved.

(3) The remainder of the total possible support when a recipient files a report demonstrating coverage of 100 percent of the units in the portion of that area previously deemed unserved.

(b) If the Commission concludes for any reason that coverage of 100 percent of the units in the portion of a specific geographic area previously deemed unserved will not be achieved, the Commission instead may provide support based on the final total units covered in that area. In such circumstances, the final disbursement will be the difference between the total amount of support based on the final units covered in that area and any support previously received with respect to that area. Parties accepting a final disbursement for a specific geographic area based on coverage of less than 100 percent of the units in the portions of that area previously deemed uncovered waive any claim for the remainder of support for which they previously were eligible with respect to that area.

§ 54.1011 Oversight.

(a) Parties receiving support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.

(b) Parties receiving support shall submit to the Commission annual reports for eight years after they qualify for support. The annual reports shall include:

(1) Electronic coverage maps illustrating the area reached by new services at a minimum scale of 1:240,000;

(2) A list of relevant census blocks previously deemed unserved, with total resident population and resident population residing in areas reached by new services (based on 2010 Census Bureau data and estimates);

(3) A report regarding the services advertised to the population in those areas; and

(4) Data received or used from speed tests analyzing network performance for new broadband services in the area for which support was received.

(c) No later than two months after providing service or two years after receiving support, parties receiving support shall submit to the Commission data from broadband speed tests for areas in which support was received demonstrating broadband performance data to and from the network meeting or exceeding the 4 Mbps downstream (actual) and 1 Mbps upstream (actual).

(d) Parties receiving support and their agents are required to retain any documentation prepared for or in connection with the recipient's support for a period of not less than eight years. All such documents shall be made available upon request to the Commission's Office of Managing

Director, Wireless Telecommunications Bureau, Wireline Competition Bureau, Office of Inspector General, and the Universal Service Fund Administrator, and their auditors.

PART 61—TARIFFS

14. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

15. Amend § 61.3 by adding paragraph (aaa) to read as follows:

§ 61.3 Definitions.

* * * * *

(aaa) *Access revenue sharing.* Access revenue sharing occurs when a rate-of-return ILEC or a CLEC enters into an access revenue sharing agreement that will result in a net payment to the other party (including affiliates) to the access revenue sharing agreement, over the course of the agreement. A rate-of-return ILEC or a CLEC meeting this trigger is subject to revised interstate switched access charge rules.

16. Amend § 61.26 by revising paragraphs (b), (d) and (e) and adding paragraph (g) to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.

* * * * *

(b) Except as provided in paragraphs (c), (e), and (g) of this section, a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the higher of:

(1) The rate charged for such services by the competing ILEC or

(2) The lower of:

(i) The benchmark rate described in paragraph (c) of this section or

(ii) The lowest rate that the CLEC has tariffed for its interstate exchange access services, within the six months preceding June 20, 2001.

* * * * *

(d) Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) and (c) of this section, in the event that, after June 20, 2001, a CLEC begins serving end users in a metropolitan statistical area (MSA) where it has not previously served end users, the CLEC shall not file a tariff for its interstate exchange access services in that MSA that prices those services above the rate charged for such services by the competing ILEC.

(e) Rural exemption. Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) through (d) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge.

* * * * *

(g) Notwithstanding paragraphs (b) through (e) of this section, a CLEC engaged in access revenue sharing, as that term is defined in § 61.3(aaa) shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the access tariff of the RBOC in the state, or, if there is no RBOC in the state, the incumbent LEC with the largest number of access lines in the state.

(1) A CLEC engaging in access revenue sharing, as that term is defined in § 61.3(aaa) shall file revised interstate switched access tariffs within forty-five (45) days of commencing access revenue sharing as that term is defined in § 61.3(aaa) or within forty-five (45) days of [the effective date of the Order] if the CLEC on that date is engaged in access revenue sharing, as that term is defined in § 61.3(aaa).

(2) A CLEC shall file the revised interstate access tariffs required by paragraph (g)(1) of this section on at least sixteen (16) days' notice.

17. Amend § 61.39 by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a) Scope. Except as provided in paragraph (g) of this section, this section provides for an optional method of filing for any local exchange carrier that is described as a subset 3 carrier in § 69.602 of this chapter, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this chapter. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of local exchange carriers subject to price cap regulation.

* * * * *

(g) A local exchange carrier otherwise eligible to file a tariff pursuant to this section may not do so if it is engaged in access revenue sharing, as that term is defined in § 61.3(aaa). A carrier so engaged must file interstate access tariffs in accordance with § 61.38 and § 69.3(e)(12)(1) of this chapter.

18. Amend § 61.58 by revising paragraph (a)(2)(i) and adding paragraph (a)(2)(iv) to read as follows:

§ 61.58 Notice requirements.

(a)* * *

(2)(i) Except as provided in paragraph (a)(2)(iv) of this section, local exchange carriers may file tariffs pursuant to the streamlined tariff filing provisions of section 204(a)(3) of the Communications Act. Such a tariff may be filed on 7 days' notice if it proposes only rate decreases. Any other tariff filed pursuant to section 204(a)(3) of the Communications Act, including those that propose a rate increase or any change in terms and conditions, shall be filed on 15 days' notice. Any tariff filing made pursuant to section 204(a)(3) of the Communications Act must comply with the applicable cost support requirements specified in this part.

* * * * *

(iv) A local exchange carrier engaging in access revenue sharing, as that term is defined in § 61.3(aaa), that is filing pursuant to the provisions of § 69.3(e)(12)(i) of this chapter shall file revised tariffs on at least 16 days' notice.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

19. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

20. Amend § 64.1601 by revising paragraph (a) to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

(a) *Delivery.* Except as provided in paragraphs (d) and (e) of this section:

(1) Telecommunications providers and entities providing interconnected voice over Internet protocol services who originate interstate or intrastate traffic on the public switched telephone network, or originate interstate or intrastate traffic that is destined for the public switched telephone network, are required to transmit the telephone number received from, or assigned to or otherwise associated with the calling party to the next provider in the path

from the originating provider to the terminating provider, where such transmission is feasible with network technology deployed at the time a call is originated. The scope of this provision includes, but is not limited to, circuit-switched and packetized transmission, such as Internet protocol and any successor technologies. Entities subject to this provision who use Signaling System 7 are required to transmit the calling party number (CPN) associated with every interstate or intrastate call in the SS7 CPN field to interconnecting providers, and are required to transmit the calling party's charge number (CN) in the SS7 CN field to interconnecting providers for any call where CN differs from CPN. Entities subject to this provision who are not capable of using SS7 but who use multifrequency (MF) signaling are required to transmit CPN, or CN if it differs from CPN, associated with every interstate or intrastate call, in the MF signaling automatic numbering information (ANI) field.

(2) Telecommunications providers and entities providing interconnected voice over Internet protocol services who are intermediate providers in an interstate or intrastate call path must pass, unaltered, to subsequent carriers in the call path, all signaling information identifying the telephone number of the calling party, and, if different, of the financially responsible party that is received with a call, unless published industry standards permit or require altering signaling information. This requirement applies to all SS7 information including, but not limited to CPN and CN, and also applies to MF signaling information or other signaling information intermediate providers receive with a call. This requirement also applies to Internet protocol signaling messages, such as calling party identifiers contained in Session Initiation Protocol (SIP) header fields, and to equivalent identifying information as used in successor technologies.

* * * * *

PART 69—ACCESS CHARGES

21. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

22. Section 69.3 is amended by revising paragraphs (e)(6) and (e)(9) and adding paragraph (e)(12) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(6) Except as provided in paragraph (e)(12) of this section, a telephone company or companies that elect to file such a tariff shall notify the association not later than March 1 of the year the tariff becomes effective, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

* * * * *

(9) Except as provided in paragraph (e)(12) of this section, a telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff pursuant to paragraph (a) of this section shall notify the association not later than March 1 of the year the tariff becomes effective that it will no longer participate in the association tariff. A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff for one of its study areas shall file its own Carrier Common Line tariff(s) for all of its study areas.

* * * * *

(12)(i) A local exchange carrier, or a group of affiliated carriers in which at least one carrier, is engaging in access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter, shall file its own access tariffs within forty-five (45) days of commencing access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter, or within forty-five (45) days of [the effective date of the Order] if the local exchange carrier on that date is engaged in access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter.

(ii) Notwithstanding paragraphs (e)(6) and (9) of this section, a local exchange carrier, or a group of affiliated carriers in which at least one carrier, is engaging in access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter, must withdraw from all interstate access tariffs issued by the association within forty-five (45) days of commencing access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter, or within forty-five (45) days of [the effective date of the Order] if the local exchange carrier on that date is engaged in access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter.

(iii) Any such carrier(s) shall notify the association when it begins access revenue sharing, or on [the effective date of the order] if it is engaged in access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter, on that date, of its intent to leave the association tariffs within forty-five (45) days.

* * * * *

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Part V

Department of Labor

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Expenditure Surveys: The Quarterly Interview and the Diary; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Consumer Expenditure Surveys: The Quarterly Interview and the Diary

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting a revision of the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Consumer Expenditure Surveys: The Quarterly Interview and the Diary," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before April 1, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Consumer Expenditure Surveys are used to gather information on expenditures, income, and other related subjects. These data are used to update the national Consumer Price Index. In addition, the data are used by a variety of researchers in academia, government agencies, and the private sector. The data are collected from a national probability sample of households designed to represent the total civilian non-institutional population.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0050. The current OMB approval is scheduled to expire on March 31, 2013. For additional information, see the related notice published in the **Federal Register** on September 20, 2010 (75 FR 57817).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1220–0050. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Control Number: 1220–0050.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 15,975.

Total Estimated Number of Responses: 76,550.

Total Estimated Annual Burden Hours: 70,104.

Total Estimated Annual Costs Burden: $0.

Dated: February 24, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–4644 Filed 3–1–11; 8:45 am]

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