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FEDERAL REGISTER

Vol. 76 Monday,
No. 44 March 7, 2011

Pages 12269–12548

OFFICE OF THE FEDERAL REGISTER

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

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WHEN: Tuesday, March 22, 2011
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 37

[Docket No. DHS–2006–0030]

RIN 1601–AA63

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes

AGENCY: Office of the Secretary, DHS.

ACTION: Final rule; full compliance date.

SUMMARY: Pursuant to the Department of Homeland Security's REAL ID regulations, States must be in full compliance with the REAL ID Act of 2005 by May 11, 2011. This final rule changes that date to January 15, 2013. This change will give States the time necessary to ensure that driver's licenses and identification cards issued by States meet the security requirements of the REAL ID Act.

DATES: Effective on March 7, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Kozar, Office of State-Issued Identification Support, Screening Coordination Office, Department of Homeland Security, Washington, DC 20528 (202) 447–3368.

SUPPLEMENTARY INFORMATION:

I. Background

The REAL ID Act of 2005 (the Act) [1] prohibits Federal agencies, effective May 11, 2008, from accepting a driver's license or personal identification card issued by a U.S. State for any official purpose unless the license or card has been issued by a State that meets the requirements set forth in the Act. Section 205(b) of the Act authorizes the Secretary of Homeland Security to grant States extensions of time to meet the requirements of the Act if the State provides adequate justification for noncompliance.

On January 29, 2008, DHS promulgated a final rule implementing the requirements of the Act. *See* 73 FR 5272, *also* 6 CFR part 37. The final rule extended the full compliance date from May 11, 2008 to May 11, 2011. *See* 6 CFR 37.51(a). To be in full compliance with the Act, States must meet the standards of 6 CFR Part 37, Subparts A through D, or have a REAL ID program that DHS has determined to be comparable to the standards of Subparts A through D. *Id.* States must be fully compliant on or before May 11, 2011. *Id.*

At the time DHS promulgated the REAL ID final rule, DHS recognized that many States were having trouble meeting the statutory requirements of the Act. In an attempt to balance DHS's responsibility to ensure that driver's licenses and identification cards intended to be used for official Federal purposes met certain statutory and regulatory requirements with the operational needs of the States, DHS bifurcated the requirements for compliance with the Act. *See* 75 FR 5272 at 5399. DHS required States to demonstrate material compliance with certain elements of the regulation by January 1, 2010, and to be fully compliant with subparts A through D of the regulation on or before May 11, 2011. *See* 6 CFR 37.51(a) and (b).

As the REAL ID program has developed further, States have continued to experience trouble meeting the statutory requirements of the Act. As a result of these difficulties, in December 2009, DHS stayed until further notice the date by which states are required to demonstrate material compliance. *See* 74 FR 68477.

II. Change of the Full Compliance Date From May 11, 2011 to January 15, 2013

Since promulgation of the REAL ID final rule, DHS has worked very closely with the States to assist with implementation and has awarded large amounts of grant funds. These efforts have assisted States in making significant progress toward meeting most of the REAL ID requirements. Since 2008, DHS has awarded States 150 separate grants that collectively total approximately $175,000,000.

Of the grant money expended by the States, the majority has been spent on the following items:

(1) Facility infrastructure upgrades, including security cameras at DMV locations, modification of facilities to limit public access to sensitive equipment and card production materials storage locations, and the addition of or upgrades to security alarms, doors, or other electronic detection equipment;

(2) Upgrades of IT infrastructure or systems overhaul (including modernization of IT systems to ensure all in-State DMVs are interoperable), software upgrades to improve the ability to protect personal identity information, upgrades of network communication, and ensuring the ability to use the DHS Systematic Alien Verification for Entitlements System (SAVE), DHS's electronic immigration verification system;

(3) Document security enhancement, including the development of more tamper-resistant documents with enhanced security features, and the use of facial recognition software to detect a person with multiple identity documents or social security numbers;

(4) Equipment upgrades, including document scanners, high-resolution digital scanners, and high-speed printers; and

(5) Reengineering of business practices, including converting from an over-the-counter issuance to a more secure central issuance process, minimizing the potential for insider fraud.

These enhancements have allowed States to make significant progress toward achieving compliance with many parts of the REAL ID regulation, including several provisions of Subpart B (minimum documentation, verification, and card issuance requirements), Subpart C (source document retention and DMV databases), and Subpart D (security at DMVs and driver's license and identification card production facilities). There are, however, still significant portions of the regulation, mostly involving document verification and markings, that most States will be unable to meet by May 11, 2011.

The inability of States to fully comply with the requirements of REAL ID by

[1] The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109–13, 119 Stat. 231, 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note).

May 11, 2011 is the result of a number of factors, including diminished State budgets caused by the economic downturn and the uncertainty throughout much of the 111th Congress about Congressional action on the PASS ID Act, which would have modified some of the requirements of REAL ID. Implementation of REAL ID involves a significant financial investment, and, despite the receipt of substantial Federal grant funds, a number of States are struggling to come up with the resources necessary to meet the full compliance deadline in these times of budget austerity. Additionally, some States delayed investing in new technology and process changes because of uncertainty associated with Congressional action on the PASS ID Act. PASS ID, which was supported by the Administration as well as State associations, including the National Governor's Association and the American Association of Motor Vehicle Administrators, would have modified certain requirements of REAL ID to facilitate State compliance. States delayed making investments to implement REAL ID to ensure they were not making expenditures to comply with requirements that would have been undone had PASS ID been enacted into law. Now that PASS ID seems unlikely to be enacted, DHS anticipates States will refocus on achieving compliance with the REAL ID requirements.

As a result of these factors, and because of the significant progress many States are making towards achieving full compliance, DHS believes that a change of the full compliance deadline from May 11, 2011 to January 15, 2013 is warranted. This change will give States more time to ensure that the documents they issue meet the security requirements of the REAL ID Act.

Without this change, as of the full compliance date, licenses and identification cards issued by States will not be accepted for official purposes. "Official purpose" as defined in both the Act and the regulation includes, but is not limited to, accessing Federal facilities and boarding Federally regulated commercial aircraft. Individuals possessing licenses and identification documents issued by non-compliant States would either have to undergo additional screening or provide alternative documents to pass through security at airports and to access Federal facilities. DHS estimates that over 90 percent of the documents shown for identity purposes for boarding Federally regulated commercial aircraft and for accessing Federal facilities are driver's licenses or other State-issued identity documents. Requiring individuals to obtain alternative or additional identity documents or to undergo additional screening would result in significant disruptions to commercial airline travel and to the ability of the public to conduct business with the Federal government.

III. Regulatory Analyses

A. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." *See* 5 U.S.C. 553(b)(B).

As discussed above, throughout the development and implementation of the REAL ID program, DHS has engaged in extensive, ongoing discussions with the States regarding their ability to comply with the REAL ID Act and the DHS regulations. Based on those communications, DHS has learned that the States, despite their good-faith efforts, will not be able to meet the May 11, 2011 deadline. If States are unable to meet the May 11, 2011 full compliance deadline, and the deadline is not changed, as of that date, Federal agencies, including the Transportation Security Administration (TSA), cannot accept State-issued driver's licenses or identification cards for use in boarding commercial aircraft. This would severely disrupt commercial aviation, as travelers would either have to obtain and use alternative TSA approved documents or submit to additional screening to pass through security at airports. Thus, it would be contrary to the public interest to inflict a significant and substantial burden on the traveling public and the travel industry. Furthermore, to seek public comment prior to changing the full compliance date would be impracticable, given that such comments could not be received and acted upon prior to the full compliance date.

Based on the above, DHS finds that notice and comment rulemaking, in this instance, would be impracticable, unnecessary, and contrary to the public interest. For the same reason, DHS finds good cause to make this rule effective immediately upon publication in the **Federal Register**. *See* 5 U.S.C. 553(d)(3). In addition, because this final rule relieves a restriction, and because the States will now have more time to ensure that the documents they issue meet the security requirements of the REAL ID Act, there is good cause to make this rule effective immediately upon publication in the **Federal Register.**

B. Executive Order 13563 and Executive Order 12866

This rule constitutes a "significant regulatory action" under Executive Order 12866, as supplemented by Executive Order 13563, and therefore has been reviewed by the Office of Management and Budget (OMB). Executive Order 12866 defines "significant regulatory action" as one 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 or 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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. This final rule, however, makes changes for which notice and comment are not necessary. Accordingly, DHS is not required to prepare a regulatory flexibility analysis. 5 U.S.C. 603, 604.

D. Paperwork Reduction Act

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

E. Executive Order 12132 (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 these implications for federalism.

F. 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 Unfunded Mandates Reform 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 million (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

G. Executive Order 13175 (Tribal Consultation)

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.

H. Executive Order 13175 (Energy Impact Analysis)

DHS has analyzed this rule under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." DHS has determined that it is not a "significant energy action" under that Order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 6 CFR Part 37

Document security, Driver's licenses, Identification cards, Motor vehicle administrations, Physical security.

The Amendments

For the reasons set forth above, the Department of Homeland Security amends 6 CFR part 37 as follows:

PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 49 U.S.C. 30301 note 6 U.S.C. 111, 112.

§ 37.51 [Amended]

■ 2. Amend § 37.51(a) by removing the date "May 11, 2011" and adding in its place the date "January 15, 2013."

Janet Napolitano,

Secretary.

[FR Doc. 2011–5002 Filed 3–4–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF ENERGY

10 CFR Part 712

RIN 1992–AZ00

Human Reliability Program: Identification of Reviewing Official

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: DOE is amending the Human Reliability Program (HRP) rule to designate the appropriate Under Secretary as the person with the authority to issue a final written decision to recertify or revoke the certification of an individual in the HRP. This action places decisional authority in the Under Secretary responsible for the operational functioning of the program in which the certification issue arises. It also streamlines internal procedures and facilitates timely final agency decision-making. This amendment modifies internal agency responsibilities but does not alter substantive rights or obligations under current law.

DATES: *Effective Date:* This rule is effective on March 7, 2011.

FOR FURTHER INFORMATION CONTACT: John Gurney, Office of the General Counsel, GC–53, 1000 Independence Avenue, SW., Washington, DC 20585; *John.Gurney@hq.doe.gov;* 202–586–8269; Dane Woodard, Office of Personnel Security, 1000 Independence Avenue, SW., Washington, DC 20585; *Dane.Woodard@hq.doe.gov*; 202–586–4148.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the Atomic Energy Act of 1954 (the AEA), the DOE owns, leases, operates or supervises activities at facilities in various locations in the United States. Many of these facilities are involved in researching, testing, producing, disassembling, or transporting nuclear explosives, which, when combined with Department of Defense delivery systems, become nuclear weapons systems. These facilities are often involved in other activities that affect the national security. Compromise of these and other DOE facilities would severely damage national security. To guard against such compromise, DOE established the Human Reliability Program (HRP), 10 CFR part 712. 69 FR 3213 (January 23, 2004). The HRP is designed to ensure that individuals who occupy positions affording unescorted access to certain materials, facilities, and programs meet the highest standards of reliability, as well as physical and mental suitability, through a system of continuous evaluation of those individuals. The purpose of this continuous evaluation is to identify, in a timely manner, individuals whose judgment may be impaired by physical or mental/personality disorders; the use of illegal drugs or the abuse of legal drugs or other substances; the abuse of alcohol; or any other condition or circumstance that may represent a reliability, safety, or security concern.

The HRP requires that all individuals who work in positions affording unescorted access to certain materials, facilities, and programs be certified as meeting the highest standards of reliability and physical and mental/personality suitability before such access may be granted.

Under current regulations, an individual's HRP certification is subject to immediate review in the event a supervisor has a reasonable belief that the individual is not reliable, based on either a safety or security concern (10 CFR 712.19(a)). During the pendency of the review, the individual will be removed from assigned HRP duties. This temporary removal is an interim, precautionary action and does not constitute a determination of reliability or access authorization status. If the removal is based on a general security concern, 10 CFR 712.19 provides for resolution under 10 CFR part 710, subpart A (General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material). Individuals who are removed from HRP duties for reasons not related to general security concerns (*e.g.,* reliability) are entitled to resolve these issues through a formal procedure outlined in 10 CFR 712.19 through 712.23. The part 712 regulations require that the individual be given a written statement of the issues, an opportunity to respond, including an opportunity for a hearing before a DOE Office of Hearings and Appeals hearing officer, and an opportunity to have the opinion of the hearing officer reviewed at a higher level before a final determination is made.

As promulgated in 2004, the existing part 712 rule designates the Deputy Secretary as the person responsible for conducting the review of the hearing officer's opinion and the Director, Office of Security's recommendation, and issuing a final written decision. This designation has proved to be impracticable, as the responsibility to review the entire record of every HRP certification suspension proceeding conducted before DOE's Office of Hearings and Appeals imposes an undue burden upon the Department's second highest-ranking official, given the substantial number and nature of the Deputy Secretary's responsibilities for the management of the Department. Consequently, to relieve this burden, promote administrative efficiency, and facilitate prompt resolution of HRP certification suspension cases, DOE is amending the HRP rule to assign the responsibility for reviewing the recommendation of the Chief Health, Safety, and Security Officer to the particular Under Secretary with cognizance over the program which makes the HRP certification in question. The amendment will streamline internal procedures, and more closely align the final agency decision in HRP certification suspension cases with the responsibilities of the relevant secretarial officer.

None of the regulatory amendments in this final rule alter substantive rights or obligations under current law.

This final rule has been approved by the Office of the Secretary of Energy.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Administrative Procedure Act

The regulatory amendments in this notice of final rulemaking reflect a transfer of function that relates solely to internal agency organization, management or personnel. As such, pursuant to 5 U.S.C. 553(a)(2), this rule is not subject to the rulemaking requirements of the Administrative Procedure Act, including the requirements to provide prior notice and an opportunity for public comment and a 30-day delay in effective date.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

As this rule of agency organization, management and personnel is not subject to the requirement to provide prior notice and an opportunity for public comment under 5 U.S.C. 553 or any other law, this rule is not subject to the analytical requirements of the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule amends existing regulations without changing the environmental effect of the regulations being amended, and, therefore, is covered under the Categorical Exclusion in paragraph A5 of Appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. DOE has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guideline issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

Issued in Washington, DC, on February 28, 2011.

Scott Blake Harris,

General Counsel.

For the reasons stated in the preamble, part 712 of chapter III of title 10, Code of Federal Regulations, is amended as set forth below:

PART 712—HUMAN RELIABILITY PROGRAM

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 42 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 5814–5815; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* E.O. 10450, 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended; 3 CFR Chap. IV.

§ 712.12 [Amended]

■ 2. Section 712.12(d) is amended by removing "Deputy Secretary" and adding in its place "Under Secretary with cognizance over the program which makes the HRP certification at issue (hereinafter 'cognizant Under Secretary'), in consultation with the DOE General Counsel".

§ 712.22 [Amended]

■ 3. Section 712.22 is amended by removing "Deputy Secretary" and adding in its place "cognizant Under Secretary".

■ 4. Section 712.23 is amended by revising the section heading to read as set forth below, and in the first sentence by removing "Deputy Secretary" and adding in its place "cognizant Under Secretary, in consultation with the DOE General Counsel".

§ 712.23 Final decision by DOE Under Secretary.

* * * * *

[FR Doc. 2011–5046 Filed 3–4–11; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

RIN 3245–AF53

8(a) Business Development Program Regulation Changes; Tribal Consultation

AGENCY: U.S. Small Business Administration

ACTION: Notice of tribal consultation meeting; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) announces that it is holding a tribal consultation meeting in Las Vegas, Nevada to discuss the recent changes to the 8(a) Business Development (BD) program regulations and take general comments on 8(a) BD program provisions. Additionally, SBA will take comments on the mandatory reporting of community benefits of provision 13 CFR 124.604. Testimony presented at this tribal consultation meeting will become part of the administrative record for SBA's consideration when the Agency deliberates on approaches to tracking community benefits.

DATES: The tribal consultation meeting will be held on Thursday, March 17, 2011 from 1 p.m. to 3 p.m. at the Reservation Economic Summit (RES) Conference in the Las Vegas Hilton, Las Vegas, Nevada.

The tribal consultation meeting pre-registration deadline date is March 10, 2011 at 5 p.m. (Eastern Standard Time).

ADDRESSES:

1. The Las Vegas Tribal Consultation Meeting address is the Las Vegas Hilton, 3000 Paradise Road, Las Vegas, NV 89109.

2. Send pre-registration requests to attend and/or testify to Mr. Marcus Grignon, Office of Native American Affairs, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; by e-mail to *marcus.grignon@sba.gov;* or by facsimile to (202) 481–6386.

3. Send all written comments to Ms. LaTanya Wright, Senior Advisor, Office of Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; *BDRegs@sba.gov* or by facsimile to (202) 481–2740.

FOR FURTHER INFORMATION CONTACT: If you have questions on SBA's Final Rule

for the 8(a) BD Program, call or e-mail LaTanya Wright, Senior Advisor, Office of Business Development, at (202) 205–5852, or *LaTanya.Wright@sba.gov.* If you have questions about registering or attending the tribal consultation, please contact Mr. Marcus Grignon at (202) 401–1455, or *marcus.grignon@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 11, 2011 (74 FR 55694) SBA issued a Final Rule, publicly available at *http://frwebgate1.access.gpo.gov/cgibin/TEXTgate.cgi?WAISdocID=kkdLxk/1/1/0&WAISaction=retrieve.* In that document, SBA made changes to the 8(a) BD Program regulations, its small business size regulations and regulations affecting Small Disadvantaged Businesses (SDBs). Some of the changes involve technical issues. Other changes are more substantive and result from SBA's experience in implementing 8(a) BD Program regulations. One such change is the addition of reporting requirements 8(a) Participants. Specifically, the final rule requires those 8(a) Participants owned by ANCs, tribes, NHOs, and CDCs to submit overall information relating to how 8(a) participation has benefited the tribal or native members and/or the tribal, native or other community as part of each Participant's annual review submissions, including information about funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services to the affected community.

SBA received several comments recommending it delay implementation of any reporting of benefits requirement to allow affected firms to gather and synthesize this data. In addition, these commenters encouraged SBA to establish a task force, comprised of native leaders and SBA, to further study how this requirement could be best implemented without imposing an undue burden on tribes, ANCs, NHOs or CDCs, or on their affected 8(a) Participants. SBA agreed and delayed implementation of new § 124.604 for six months after the effective date for the other provisions of the final rule. These tribal consultations are for the purpose of developing best practices for collecting and utilizing the data. SBA expects that two Participants owned by the same tribe, ANC, NHO or CDC will submit identical data describing the benefits provided by the tribe, ANC, NHO or CDC.

II. Tribal Consultation Meeting

The purpose of this tribal consultation meeting is to conform to the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments"; to provide interested parties with an opportunity to discuss the 8(a) BD Program regulatory changes; and for SBA to obtain the comments of SBA's stakeholders on approaches to tracking community benefits. In addition to general oral and written comments about 8(a) BD program provisions, SBA is requesting oral and written comments on approaches to tracking community benefits as required by the 8(a) BD Program regulations. SBA considers tribal consultation meetings a valuable component of its deliberations and believes that this tribal consultation meeting will allow for constructive dialogue with the tribal community, Tribal Leaders, Elders and elected members of Alaska Native Villages or their appointed representatives.

The format of this tribal consultation meeting will consist of a panel of SBA representatives who will preside over the session. The oral and written testimony will become part of the administrative record for SBA's consideration. Written testimony may be submitted in lieu of oral testimony.

SBA will analyze the testimony, both oral and written, along with any written comments received. SBA officials may ask questions of a presenter to clarify or further explain the testimony. The purpose of the tribal consultation is to discuss changes to the 8(a) BD Program with the tribal community, Tribal Leaders, Elders and elected members of Alaska Native Villages or their appointed representatives and to seek their comments on approaches to tracking community benefits. SBA requests that the comments focus on the new regulatory changes as stated in the Agency's Final Rule. SBA requests that commenters not raise issues pertaining to other SBA small business programs.

Presenters may provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. Electronic or digitized copies are encouraged.

The tribal consultation meeting will be held for two hours. The meeting will begin at 1 p.m. and end at 3 p.m. (Pacific Standard Time). SBA will adjourn early if all those scheduled have delivered their testimony.

III. Registration

SBA respectfully requests that an elected or appointed representative of the tribal communities that are interested in attending please pre-register in advance and indicate whether you would like to testify at the hearing. Registration requests should be received by SBA by March 10, 2011 at 5 p.m. (Eastern Standard Time). Please contact Mr. Marcus Grignon in SBA's Office of Native American Affairs in writing at *marcus.grignon@sba.gov* or by facsimile at (202) 481–2740.

If you are interested in testifying, please include the following information relating to the person testifying: Name, Organization affiliation, Address, Telephone number, E-mail address and Fax number. SBA will attempt to accommodate all interested parties who wish to present testimony. Based on the number of registrants, it may be necessary to impose time limits to ensure that everyone who wishes to testify has the opportunity to do so. SBA will confirm in writing the registration of presenters and attendees.

IV. Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the tribal consultation meeting, contact Mr. Marcus Grignon at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644 and 662(5); Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592; and, E.O. 13175, 65 FR 67249.

Dated: March 2, 2011.

Clara Pratte,

National Director for the Office of Native American Affairs.

[FR Doc. 2011–5118 Filed 3–4–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. SW024; Special Conditions No. 27–024–SC]

Special Conditions: Bell Helicopter Textron Canada Limited Model 206B and 206L Series Helicopters, § 27.1309, Installation of a Hoh Aeronautics, Inc. Autopilot/Stabilization Augmentation System (AP/SAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the modification of the Bell Helicopter Textron Canada Limited (Bell) model 206B and 206L series helicopters. These model helicopters will have novel or unusual design features when modified by installing the Hoh Aeronautics, Inc. (Hoh) complex autopilot/stabilization augmentation system (AP/SAS) that has potential failure conditions with more severe adverse consequences than those envisioned by the existing applicable airworthiness regulations. These special conditions contain the added safety standards the Administrator considers necessary to ensure the failures and their effects are sufficiently analyzed and contained.

DATES: The effective date of these special conditions is February 25, 2011. We must receive your comments by May 6, 2011.

ADDRESSES: You may send your comments by e-mail to: *mark.wiley@faa.gov;* by mail to: Federal Aviation Administration, Rotorcraft Directorate, Attn: Mark Wiley (ASW–111), Special Conditions Docket No. SW024, 2601 Meacham Blvd., Fort Worth, Texas 76137; or by delivering your comments to the Rotorcraft Directorate at the indicated address. You must mark your comments: Docket No. SW024. You can inspect comments in the special conditions docket on weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m., in the Rotorcraft Directorate.

FOR FURTHER INFORMATION CONTACT: Mark Wiley, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group (ASW–111), 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5134; facsimile (817) 222–5961; or e-mail to *mark.wiley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

The substance of these special conditions has been subjected to the notice and comment period previously and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Further, a delay in the effective date of these special conditions would significantly delay issuance of the design approval and thus delivery of the helicopter, which is imminent. Therefore, the FAA has determined that prior public notice and comment are unnecessary, impracticable, and contrary to the public interest, and finds good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment.

Comments Invited

While we did not precede this with a notice of proposed special conditions, we invite interested people to take part in this action by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will file in the special conditions docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this document between 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your mailed comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On July 13, 2009, Hoh submitted an application to the FAA's Los Angles Aircraft Certification Office (LA ACO) for a supplemental type certificate (STC) to install an AP/SAS on the Bell model 206B, 206L, 206L–1, 206L–3, and 206L–4 (206L series) helicopters. The Bell model 206B and 206L series helicopters are 14 CFR part 27 Normal category, single turbine engine, conventional helicopters designed for civil operation. These helicopter models are capable of carrying four passengers with one pilot, and have a maximum gross weight of between approximately 3,200 to 4,450 pounds, depending on the model. The major design features include a 2-blade, teetering main rotor, a 2-blade anti-torque tail rotor, a skid landing gear, and a visual flight rule (VFR) basic avionics configuration. Hoh proposes to modify these model helicopters by installing a two-axis AP/SAS.

Type Certification Basis

Under 14 CFR 21.115, Hoh must show that the Bell model 206B and 206L series helicopters, as modified by the installed AP/SAS, continue to meet the 14 CFR 21.101 standards. The baseline of the certification basis for the unmodified Bell model 206B and 206L series helicopters is listed in Type Certificate Number H2SW. Although the Bell 206B, 206L, 206L–1, and 206L–3 were certificated under Civil Air Regulations (CAR) 6.606, the Bell model 206L–4 was certificated to § 27.1309; the applicant has voluntarily agreed to comply with § 27.1309 as part of the certification basis for this STC for all of these models. Additionally, compliance must be shown to any applicable equivalent level of safety findings, exemptions, and special conditions, prescribed by the Administrator as part of the certification basis.

If the Administrator finds the applicable airworthiness regulations (that is, 14 CFR part 27), as they pertain to this STC, do not contain adequate or appropriate safety standards for the Bell model 206B and 206L series helicopters because of a novel or unusual design feature, special conditions are prescribed under § 21.101(d).

In addition to the applicable airworthiness regulations and special conditions, Hoh must show compliance of the AP/SAS STC-altered Bell model 206B and 206L series helicopters with the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Hoh AP/SAS incorporates novel or unusual design features, for installation in a Bell model 206B, 206L, 206L–1, 206L–3, or 206L–4 helicopter, Type Certificate Number H2SW. This AP/SAS performs non-critical control functions, since this model helicopter has been certificated to meet the applicable requirements independent of this system. However, the possible failure conditions for this system, and their effect on the continued safe flight and landing of the helicopters, are more severe than those envisioned by the present rules.

Discussion

The effect on safety is not adequately covered under § 27.1309 for the application of new technology and new application of standard technology.

Specifically, the present provisions of § 27.1309(c) do not adequately address the safety requirements for systems whose failures could result in catastrophic or hazardous/severe-major failure conditions, or for complex systems whose failures could result in major failure conditions.

To comply with the provisions of the special conditions, we require that Hoh provide the FAA with a systems safety assessment (SSA) for the final AP/SAS installation configuration that will adequately address the safety objectives established by the functional hazard assessment (FHA) and the preliminary system safety assessment (PSSA), including the fault tree analysis (FTA). This must ensure that all failure conditions and their resulting effects are adequately addressed for the installed AP/SAS. The SSA process, FHA, PSSA, and FTA are all parts of the overall safety assessment (SA) process discussed in FAA Advisory Circular (AC) 27–1B (Certification of Normal Category Rotorcraft) and Society of Automotive Engineers (SAE) document Aerospace Recommended Practice (ARP) 4761 (Guidelines and Methods for Conducting the Safety Assessment Process on civil airborne Systems and Equipment).

These special conditions require that the AP/SAS installed on a Bell model 206B or 206L series helicopter meet the requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design integrity requirements.

Applicability

These special conditions are applicable to the Hoh AP/SAS installed as an STC approval, in Bell model 206B, 206L, 206L–1, 206L–3, and 206L–4 helicopters, Type Certificate Number H2SW.

Conclusion

This action affects only certain novel or unusual design features for a Hoh AP/SAS STC installed on one model series of helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the model helicopters listed in the "Applicability" section.

List of Subjects in 14 CFR Part 27

Aircraft, Aviation safety.

The authority citation for these special conditions is as follows:

Authority: 42 U.S.C. 7572, 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the Hoh Aeronautics, Inc. (Hoh) supplemental type certificate basis for the installation of an autopilot/stabilization augmentation system (AP/SAS) on the Bell Helicopter Textron Canada Limited (Bell) model 206B, 206L, 206L–1, 206L–3, and 206L–4 (206L series) helicopters, Type Certificate Number H2SW.

The AP/SAS must be designed and installed so that the failure conditions identified in the Functional Hazard Assessment and verified by the System Safety Assessment, after design completion, are adequately addressed in accordance with the "failure condition categories" and "requirements" sections (including the system design integrity, design environmental, and test and analysis requirements) of these special conditions.

Failure Condition Categories

Failure conditions are classified, according to the severity of their effects on the rotorcraft, into one of the following categories:

1. *No Effect*—Failure conditions that would have no effect on safety; for example, failure conditions that would not affect the operational capability of the rotorcraft or increase crew workload; however, could result in an inconvenience to the occupants, excluding the flight crew.

2. *Minor*—Failure conditions which would not significantly reduce rotorcraft safety, and which would involve crew actions that are well within their capabilities. Minor failure conditions would include, for example, a slight reduction in safety margins or functional capabilities, a slight increase in crew workload, such as, routine flight plan changes, or result in some physical discomfort to occupants.

3. *Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be, for example, a significant reduction in safety margins or functional capabilities, a significant increase in crew workload or result in impairing crew efficiency, physical distress to occupants, including injuries, or physical discomfort to the flight crew.

4. *Hazardous/Severe-Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be:

- A large reduction in safety margins or functional capabilities;
- Physical distress or excessive workload that would impair the flight crew's ability to the extent that they could not be relied on to perform their tasks accurately or completely; or,
- Possible serious or fatal injury to a passenger or a cabin crewmember, excluding the flight crew.

Note 1: "Hazardous/severe-major" failure conditions can include events that are manageable by the crew by the use of proper procedures, which, if not implemented correctly or in a timely manner, may result in a catastrophic event.

5. *Catastrophic*—Failure conditions which would result in multiple fatalities to occupants, fatalities or incapacitation to the flight crew, or result in loss of the rotorcraft.

The present §§ 27.1309(b) and (c) regulations do not adequately address the safety requirements for systems whose failures could result in "catastrophic" or "hazardous/severe-major" failure conditions, or for complex systems whose failures could result in "major" failure conditions. The current regulations are inadequate because when §§ 27.1309(b) and (c) were promulgated, it was not envisioned that this type of rotorcraft would use systems that are complex or whose failure could result in "catastrophic" or "hazardous/severe-major" effects on the rotorcraft. This is particularly true with the application of new technology, new application of standard technology, or other applications not envisioned by the rule that affect safety.

Hoh must provide the FAA with a systems safety assessment (SSA) for the final AP/SAS installation configuration that will adequately address the safety objectives established by the functional hazard assessment (FHA) and the preliminary system safety assessment (PSSA), including the fault tree analysis (FTA). This will show that all failure conditions and their resulting effects are adequately addressed for the installed AP/SAS.

Note 2: The SSA process, FHA, PSSA, and FTA are all parts of the overall safety assessment (SA) process discussed in FAA Advisory Circular (AC) 27–1B (Certification of Normal Category Rotorcraft) and Society of Automotive Engineers (SAE) document Aerospace Recommended Practice (ARP) 4761 (Guidelines and Methods for Conducting the Safety Assessment Process on Civil Airborne Systems and Equipment).

Requirements

Hoh must comply with the existing requirements of § 27.1309 for all applicable design and operational

aspects of the AP/SAS with the failure condition categories of "no effect," and "minor," and for non-complex systems whose failure condition category is classified as "major." Hoh must comply with the requirements of these special conditions for all applicable design and operational aspects of the AP/SAS with the failure condition categories of "catastrophic" and "hazardous severe/major," and for complex systems whose failure condition category is classified as "major." A complex system is a system whose operations, failure conditions, or failure effects are difficult to comprehend without the aid of analytical methods (for example, FTA, Failure Modes and Effect Analysis, FHA).

System Design Integrity Requirements

Each of the failure condition categories defined in these special conditions relate to the corresponding aircraft system integrity requirements. The system design integrity requirements, for the Hoh AP/SAS, as they relate to the allowed probability of occurrence for each failure condition category, and the proposed software design assurance level, are as follows:

• "Major"—For systems with "major" failure conditions, failures resulting in these major effects must be shown to be remote, a probability of occurrence on the order of between 1×10^{-5} to 1×10^{-7} failures/hour, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems And Equipment Certification) Level C software design assurance level.

• "Hazardous/Severe-Major"—For systems with "hazardous/severe-major" failure conditions, failures resulting in these hazardous/severe-major effects must be shown to be extremely remote, a probability of occurrence on the order of between 1×10^{-7} to 1×10^{-9} failures/hour, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems And Equipment Certification) Level B software assurance level.

• "Catastrophic"—For systems with "catastrophic" failure conditions, failures resulting in these catastrophic effects must be shown to be extremely improbable, a probability of occurrence on the order of 1×10^{-9} failures/hour or less, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems And Equipment Certification) Level A design assurance level.

System Design Environmental Requirements

The AP/SAS system equipment must be qualified to the appropriate environmental level per RTCA document DO–160F (Environmental Conditions and Test Procedures for Airborne Equipment), for all relevant aspects. This is to show that the AP/SAS system performs its intended function under any foreseeable operating condition, which includes the expected environment in which the AP/SAS is intended to operate. Some of the main considerations for environmental concerns are installation locations and the resulting exposure to environmental conditions for the AP/SAS system equipment, including considerations for other equipment that may be affected environmentally by the AP/SAS equipment installation. The level of environmental qualification must be related to the severity of the considered failure conditions and effects on the rotorcraft.

Test Analysis Requirements

Compliance with the requirements of these special conditions may be shown by a variety of methods, which typically consist of analysis, flight tests, ground tests, and simulation, as a minimum. Compliance methodology is related to the associated failure condition category. If the AP/SAS is a complex system, compliance with the requirements for failure conditions classified as "major" may be shown by analysis, in combination with appropriate testing to validate the analysis. Compliance with the requirements for failure conditions classified as "hazardous/severe-major" may be shown by flight-testing in combination with analysis and simulation, and the appropriate testing to validate the analysis. Flight tests may be limited for "hazardous/severe-major" failure conditions and effects due to safety considerations. Compliance with the requirements for failure conditions classified as "catastrophic" may be shown by analysis, and appropriate testing in combination with simulation to validate the analysis. Very limited flight tests in combination with simulation are used as a part of a showing of compliance for "catastrophic" failure conditions. Flight tests are performed only in circumstances that use operational variations, or extrapolations from other flight performance aspects to address flight safety.

These special conditions require that the Hoh AP/SAS system installed on a Bell model 206B, 206L, 206L–1, 206L–3, or 206L–4 helicopter, Type Certificate Number H2SW, meet these requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design system integrity requirements.

Issued in Fort Worth, Texas, on February 25, 2011.

Kimberly K. Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–5103 Filed 3–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0960; Directorate Identifier 98–ANE–09–AD; Amendment 39–16620; AD 98–09–27R1]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–Trent 768, 772, and 772B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are rescinding an existing airworthiness directive (AD) for the products listed above. The existing AD, AD 98–09–27, resulted from aircraft certification testing which revealed that stresses on the thrust reverser hinge were higher than had been anticipated during engine certification, and the United Kingdom Civil Aviation Authority, issuing AD 008–03–97. Since we issued AD 98–09–27, we discovered that its requirements were duplicated in airplane-level AD 2001–09–14, issued by the FAA Transport Airplane Directorate. We proposed to rescind the engine-level AD.

DATES: This AD becomes effective April 11, 2011.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

On April 23, 1998, the FAA Engine & Propeller Directorate issued engine AD 98–09–27 (63 FR 24911, May 6, 1998). On April 30, 2001, the FAA Transport Airplane Directorate issued airplane AD 2001–09–14 (66 FR 23838, May 10, 2001). Those ADs both require the same initial and repetitive visual inspections of Rolls-Royce plc RB211–Trent 768 and 772 series turbofan engine thrust reverser hinge lugs and attachment ribs for cracks, and, if necessary, removal from service and replacement with serviceable parts.

Since we issued engine AD 98–09–27 and airplane AD 2001–09–14, we determined that duplicate ADs to address the same unsafe condition were unnecessary. We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 15, 2010 (75 FR 69611), and proposed to rescind AD 98–09–27, Amendment 39–10508 (63 FR 24911, May 6, 1998).

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal.

Conclusion

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

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

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 Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by rescinding airworthiness directive (AD) 98–09–27, Amendment 39–10508 (63 FR 24911, May 6, 1998):

98–09–27R1 Rolls-Royce plc: Amendment 39–16620. Docket No. FAA–2010–0960; Directorate Identifier 98–ANE–09–AD.

Effective Date

(a) This AD becomes effective April 11, 2011.

Affected ADs

(b) This AD rescinds AD 98–09–27.

Applicability

(c) This AD applies to Rolls-Royce plc RB211–Trent 768, 772, and 772B turbofan engines. These engines are installed on, but not limited to, Airbus A330–341 and A330–342 series airplanes.

Issued in Burlington, Massachusetts, on February 24, 2011.

Peter A. White,

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

[FR Doc. 2011–4831 Filed 3–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0018; Airspace Docket No. 10–AWP–18]

Amendment to and Revocation of Reporting Points; Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends and removes, several Hawaiian Reporting Points. Specifically, the FAA is revising the description of EELIC, and TOADS to address recent technical adjustments to their actual locations. Additionally, the FAA is renaming the SILVA reporting point to SYVAD, and has determined that the LULUS, NIEMO, and PADDI reporting points are no longer needed. This action ensures the safe and efficient management of aircraft within the National Airspace System (NAS).

DATES: Effective date 0901 UTC, May 5, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace Regulation and ATC Procedures Group, Office of Mission Support Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The Honolulu Control Center conducted a review of their airspace and

has identified two reporting points that need to be amended to align with their actual locations. No changes to the routing or procedures are being made. Several reporting points are no longer needed for air traffic control and are being removed, and one reporting point is being renamed. Accordingly, since this is an administrative change and does not involve a change in the dimension or operating requirements of this airspace, notice and public procedures under 5 U.S.C. 553 (b) are unnecessary.

Hawaiian Reporting Points are listed in paragraph 7006 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Reporting Points listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending two Reporting Points (EELIC and TOADS) to reflect their actual locations. Additionally, the SILVA reporting point will be renamed SYVAD, and adjusted to reflect its actual location. The LULUS, NIEMO, and PADDI Reporting Points will be removed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 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 amends Reporting Points in Hawaii.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Polices and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 7006—Hawaiian reporting points.

* * * * *

EELIC [Amended]

Lat. 19°27′26″ N., long. 153°18′23″ W. (INT Hilo, HI, 099° radial and the Honolulu CTA/FIR boundary).

TOADS [Amended]

Lat. 22°46′09″ N., long. 156°41′46″ W. (INT Mollkai, HI, 015° radial and the Honolulu CTA/FIR boundary).

SYVAD [Amended]

INT South Kauai, HI, 271° radial and long. 162°45′29″ W.

LULUS: [Removed]

NIEMO: [Removed]

PADDI: [Removed]

SILVA: [Removed]

Issued in Washington, DC, on February 28, 2011.

Edith V. Parish,

Manager, Airspace, Regulation and ATC Procedures Group.

[FR Doc. 2011–4925 Filed 3–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 750

[Docket No. 110224164–1168–02]

RIN 0694–AF16

Amendment to the Export Administration Regulations: Application Processing, Issuance, and Denial

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by clarifying the Application Processing, Issuance, and Denial provisions concerning BIS's authority to revise, suspend or revoke licenses.

DATES: This rule is effective March 2, 2011.

FOR FURTHER INFORMATION CONTACT: Sheila Quarterman, Bureau of Industry and Security, Regulatory Policy Division, by phone at 202–482–2440, or by e-mail at *rpd2@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Amendment to the Export Administration Regulations: Part 750—Application Processing, Issuance, and Denial

Part 750 of the EAR provides for the revision, suspension or revocation of licenses whenever it is known that the EAR have been violated or that a violation is about to occur. In this final rule, BIS revises the first sentence in paragraph (a) of Section 750.8 (Revocation or suspension of licenses) by removing the phrase "whenever it is known that the EAR have been violated or that a violation is about to occur." Harmonization is an objective for agencies under Executive Order 13563, which states: "In developing regulatory actions and identifying appropriate approaches, each agency shall attempt

to promote such coordination, simplification, and harmonization." This change will clarify BIS's authority to revise, suspend, or revoke licenses and will harmonize Section 750.8(a) of the EAR, concerning licenses, with an analogous provision in Section 740.2(b) regarding the revision, suspension or revocation of license exceptions under the EAR. BIS makes this change in Part 750 to make it clear and consistent with § 740.2(b) that the United States' ability to revoke or suspend a license is not limited to only when the EAR have been violated or that a violation is about to occur but also to prevent licensed export transactions in which the United States may subsequently have an interest, including a foreign policy interest.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 16, 2010 (75 FR 50681, August 16, 2010), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. This final rule has been determined to be significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provisions of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve a collection of information and, therefore, does not implicate requirements of the PRA.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Department finds that the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring prior notice, the opportunity for public participation, and a delay in effective date are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)) or, in the alternative, the Department for good cause finds that prior notice and opportunity for public comment are contrary to the public interest (5 U.S.C. 553(b)(B)). It is contrary to the public interest to delay clarifying the Department's authority to revise, suspend or revoke licenses because this delay may allow for the occurrence of certain export transactions that the United States has an interest, including a foreign policy interest, in preventing. Therefore, this regulation is issued in final form. In addition, the Department finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the reasons provided above. Accordingly, this regulation is made effective immediately upon publication.

No other law requires that a notice of proposed rulemaking and an opportunity for public comments be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 750

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, part 750 of the Export Administration Regulations (15 CFR Parts 730–774) is amended as follows:

PART 750—[AMENDED]

■ 1. The authority citation for 15 CFR Part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* Sec 1503, Pub. L. 108–11, 117 Stat. 559: E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–21 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2010, 75 FR 50681 (August, 16, 2010).

§ 750.8 [Amended]

■ 2. The first sentence of paragraph (a) of § 750.8 is amended by removing the text "whenever it is known that the EAR have been violated or that a violation is about to occur."

Dated: March 2, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–5079 Filed 3–2–11; 4:15 pm]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0813; FRL–9239–6]

Revisions to the California State Implementation Plan, for Imperial County, Kern County, and Ventura County; Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD), Kern County Air Pollution Control District (KCAPCD), and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that define terms used in other air pollution regulations in these areas.

DATES: This rule is effective on May 6, 2011 without further notice, unless EPA receives adverse comments by April 6, 2011. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0813, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured

and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
ICAPCD	101	Definitions	02/23/10	07/20/10
KCAPCD	102	Definitions	03/11/10	07/20/10
VCAPCD	2	Definitions	01/12/10	07/20/10

On August 25, 2010, EPA determined that the submittal for ICAPCD Rule 101, KCAPCD Rule 102, and VCAPCD Rule 2 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of these rules into the SIP on the dates listed: ICAPCD Rule 101 on November 15, 2007, KCAPCD Rule 102 on February 3, 2000, and VCAPCD Rule 2 on November 19, 2004.

C. What is the purpose of the submitted rules revisions?

Section 110(a) of the CAA requires States to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

Imperial County Rule 101, Definitions, is being amended by adding new definitions associated with recently adopted as amended Rule 400.1, Stationary Gas Turbines (Reasonably Available Control Technology), Rule 400.2, Boilers, Process Heaters and Steam Generators, Rule 424, Architectural Coatings, Rule 425, Aerospace Coating Operations and Rule 427, Automotive Refinishing Operations. In addition, definitions that became obsolete because of the newly adopted or amended rules were removed.

Kern County Rule 102, Definitions, is being amended to update the Exempt Compounds list to conform to the Exempt Compounds list of the EPA. Four definitions have also been added to the Rule along with modifications to Standard Conditions and minor formatting.

Ventura County Rule 2, Definitions, is being amended by adding four new "exempt organic compounds" to the list of low reactive compounds.

EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (*see* section 110(a) of the Act) and must not relax existing requirements (*see* sections 110(l) and 193). EPA policy that we use to evaluate enforceability requirements includes the Bluebook ("Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988) and the Little Bluebook ("Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP anti-backsliding. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not anticipate objections to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously submitting and proposing approval of these rules. If we receive adverse comments by April 6, 2011, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 6, 2011. This action will incorporate these rules into the Federally enforceable SIP.

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

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory

action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, 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 final rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

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

This 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 under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (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. The Executive Order has informed the development and implementation of EPA's environmental justice program and policies. Consistent with the Executive Order and the associated Presidential Memorandum, the Agency's environmental justice policies promote environmental protection by focusing attention and Agency efforts on addressing the types of environmental harms and risks that are prevalent among minority, low-income and Tribal populations.

This action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or Tribal populations because it increases the level of environmental protection for all affected populations.

Specifically, EPA's action would have the affect of standardizing environmental requirements throughout the area, and would not relax environmental requirements in any subsection of the area.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective May 6, 2011.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 23, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(381) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(381) New and amended regulations were submitted on July 20, 2010, by the Governor's designee.

(i) Incorporation by reference.

(A) Imperial County Air Pollution Control District.

(*1*) Rule 101, "Definitions," adopted on February 23, 2010.

(B) Kern County Air Pollution Control District.

(*1*) Rule 102, "Definitions," adopted on March 11, 2010.

(C) Ventura County Air Pollution Control District.

(*1*) Rule 2, "Definitions", "Exempt Organic Compounds," revised on January 12, 2010.

* * * * *

[FR Doc. 2011–4914 Filed 3–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R06–RCRA–2010–0587.; FRL–9274–4]

Texas: Final Authorization of State-initiated Changes and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: During a review of Texas' regulations, the EPA identified a variety of State-initiated changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). We have determined that these changes are minor and satisfy all requirements needed to qualify for Final authorization and are authorizing the State-initiated changes through this Direct Final action.

The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of Texas' hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations.

DATES: This regulation is effective May 6, 2011, unless the EPA receives adverse written comment on the codification of the Texas authorized RCRA program by the close of business April 6, 2011. If the EPA receives such comments, it will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect. The incorporation by reference of authorized provisions in the Texas statutes and regulations contained in this rule is approved by the Director of the Federal Register as of May 6, 2011

in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2010–0587 by one of the following methods:

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

2 *E-mail: patterson.alima@epa.gov* or *banks.julia@epa.gov.*

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or e-mail. The Federal *http://www.regulations.gov* Web site is an "anonymous access" system, which means the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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. You can view and copy the documents that form the basis for this authorization and codification and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following location: EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–6444. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, and Julia Banks Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone numbers: (214) 665–8533, and (214) 665–8178, E-mail address: *patterson.alima@epa.gov* or *banks.julia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Authorization of State-Initiated Changes

A. Why are revisions to State programs necessary?

States which have received Final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask the EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

B. What decisions have we made in this rule?

We conclude that Texas' revisions to its authorized program meet all of the statutory and regulatory requirements established by RCRA. We found that the State-initiated changes make Texas' rules more clear or conform more closely to the Federal equivalents and are so minor in nature that a formal application is unnecessary. Therefore, we grant Texas final authorization to operate its hazardous waste program with the changes described in the table at Section G below. Texas has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out all authorized aspects of the RCRA program, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Texas, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in Texas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Texas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the statutes and regulations for which Texas is being authorized by this direct action are already effective and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

The EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization or the incorporation-by-reference of the State program, we will withdraw this rule by publishing a timely document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes, or the incorporation-by-reference, on the proposal mentioned in the previous paragraph. We will then address all public comments in a later

final rule. If you want to comment on this authorization and incorporation-by-reference, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program or the incorporation-by-reference of the State program, we may withdraw only that part of this rule, but the authorization of the program changes or the incorporation-by-reference of the State program that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization or incorporation-by-reference of the State program will become effective and which part is being withdrawn.

F. For what has Texas previously been authorized?

The State of Texas initially received final authorization on December 26, 1984 (49 FR 48300), to implement its Base Hazardous Waste Management Program. This authorization was clarified in a notice published March 26, 1985 (50 FR 11858). Texas received authorization for revisions to its program, effective October 4, 1985 (51 FR 3952), February 17, 1987 (51 FR 45320), March 15, 1990 (55 FR 7318), July 23, 1990 (55 FR 21383), October 21, 1991 (56 FR 41626), December 4, 1992 (57 FR 45719), June 27, 1994 (59 FR 16987), June 27, 1994 (59 FR 17273), November 26, 1997 (62 FR 47947), December 3, 1997 (62 FR 49163), October 18, 1999 (64 FR 44836), November 15, 1999 (64 FR 49673), September 11, 2000 (65 FR 43246), June 14, 2005 (70 FR 34371), December 29, 2008, (73 FR 64252), and July 13, 2009 (74 FR 22469).

G. What changes are we authorizing with this action?

The State has made amendments to the provisions listed in the table which follows. These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). We are granting Texas final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA statutory provisions or RCRA regulations found at 40 CFR as of July 1, 2005. The Texas provisions are from the Texas Administrative Code (TAC), Title 30, effective December 31, 2007.

State requirement	Analogous Federal requirement
30 TAC 3.2(25) "Person"	40 CFR 260.10 "Person"; 40 CFR 270.2 "Person".
30 TAC 281.21(d)	40 CFR 124.6 related; no direct Federal analog.
30 TAC 305.2(20) "licensed professional geoscientist"	40 CFR 260.10 related; no direct Federal analog.
30 TAC 305.45(a)(8) intro.—(a)(8)(B)	40 CFR 270.13(l) related.
30 TAC 305.50(a)(6)	40 CFR 270.17(b)(1), 270.20(b), 270.21(b)(1)(i).
30 TAC 324.2(8) and (9)	40 CFR 279.1 related.
30 TAC 324.4	40 CFR 279.12.
30 TAC 324.7	40 CFR 279.30–279.32 (Subpart D).
30 TAC 324.16	40 CFR 279.10(i).
30 TAC 324.21	40 CFR 271.16 related; no direct Federal analog.
30 TAC 335.1(87) "Licensed professional geoscientist"	40 CFR 260.10 related; no direct Federal analog.
30 TAC 335.116, except (g)	40 CFR 265.90, except (f).
30 TAC 335.123	40 CFR 265.280.
30 TAC 335.156(b)(3)–(b)(5)	40 CFR 264.90(b)(3)–(b)(5).
30 TAC 335.172	40 CFR 264.280.

H. Who handles permits after the authorization takes effect?

This authorization does not affect the status of State permits and those permits issued by the EPA because no new substantive requirements are a part of these revisions.

I. How does this action affect Indian Country (18 U.S.C. 1151) in Texas?

Texas is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

II. Incorporation-by-Reference

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. What is the history of the codification of Texas' hazardous waste management program?

The EPA incorporated by reference Texas' then authorized hazardous waste program effective December 3, 1997 (62 FR 49163), November 15, 1999 (64 FR 49673), and December 29, 2008 (73 FR 64252). In this action, EPA is revising Subpart SS of 40 CFR part 272 to include the recent authorization revision actions effective July 13, 2009 (74 FR 22469).

C. What codification decisions have we made in this rule?

The purpose of this **Federal Register** document is to codify Texas' base hazardous waste management program and its revisions to that program. The EPA provided notices and opportunity for comments on the Agency's decisions to authorize the Texas program, and the EPA is not now reopening the decisions, nor requesting comments, on the Texas

authorizations as published in the **Federal Register** notices specified in Section F of this document.

This document incorporates by reference Texas' hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying Texas' authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the Texas hazardous waste management program.

The EPA is incorporating by reference the Texas authorized hazardous waste program in subpart SS of 40 CFR part 272. Section 272.2201 incorporates by reference Texas' authorized hazardous waste statutes and regulations. Section 272.2201 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What is the effect of Texas' codification on enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013, and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Texas procedural and enforcement authorities. Section 272.2201(c)(2) of 40 CFR lists the statutory and regulatory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What State provisions are not part of the codification?

The public needs to be aware that some provisions of Texas' hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (*see* 40 CFR 271.1(i));

(2) Federal rules for which Texas is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference;

(3) Unauthorized amendments to authorized State provisions; and

(4) New unauthorized State requirements.

State provisions that are "broader in scope" than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.2201(c)(3) lists the Texas regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. "Broader in scope" provisions cannot be enforced by the EPA; the State, however, may enforce such provisions under State law.

Texas has adopted but is not authorized for the following Federal rules published in the **Federal Register** on April 12, 1996 (61 FR 16290); December 5, 1997 (62 FR 64504); October 22, 1998 (63 FR 56710); June 8, 2000 (65 FR 36365); March 4, 2005 (70 FR 10776), as amended June 16, 2005 (70 FR 35034). Therefore, these Federal amendments included in Texas' adoption by reference at 30 Texas Administrative Code (TAC) sections: 335.112(a)(1) and (a)(4), 335.152(a)(1) and (a)(4), and 335.431(c)(1), are not part of the State's authorized program and are not part of the incorporation by reference addressed by this **Federal Register** document.

Additionally, Texas' hazardous waste regulations include amendments which have not been authorized by the EPA. Since the EPA cannot enforce a State's requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by the EPA include amendments to previously authorized State regulations as well as new State requirements.

In those instances where Texas has made unauthorized amendments to previously authorized sections of State code, the EPA is identifying in 40 CFR 272.2201(c)(4) any regulations which, while adopted by the State and incorporated by reference, include language not authorized by the EPA. Those unauthorized portions of the State regulations are not Federally enforceable. Thus, notwithstanding the language in Texas hazardous waste regulations incorporated by reference at 40 CFR 272.2201(c)(1), the EPA will only enforce those portions of the State regulations that are actually authorized by the EPA. For the convenience of the regulated community, the actual State regulatory text authorized by the EPA for the citations listed at 272.2201(c)(4) (*i.e.,* without the unauthorized amendments) is compiled as a separate document, *Addendum to the EPA Approved Texas Regulatory Requirements Applicable to the Hazardous Waste Management Program, July 2009.* This document is available from EPA Region 6, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444.

State regulations that are not incorporated by reference in this rule at 40 CFR 272.2201(c)(1), or that are not listed in 40 CFR 272.2201(c)(3) ("broader in scope") or 40 CFR 272.2201(c)(4) ("unauthorized amendments to authorized State provisions"), are considered new unauthorized State requirements. These requirements are not Federally enforceable.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What will be the effect of Federal HSWA requirements on the codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to

adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

Statutory and Executive Order Reviews

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, this action is not subject to review by OMB. This rule incorporated by reference Texas' authorized hazardous waste management regulations, and imposes no additional requirements beyond those imposed by State law. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Incorporation by reference will not impose any new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approves under 40 CFR part 271, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use" (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for incorporation by reference as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State incorporation by reference application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. The final rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

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

List of Subjects in 40 CFR Parts 271 and 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 24, 2011.

Al Armendariz,

Regional Administrator, Region 6.

For the reasons set forth in the preamble, 40 CFR parts 271 and 272 are amended as follows:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

EPA is granting final authorization under part 271 to the State of Texas for revisions to its hazardous waste program under the Resource Conservation and Recovery Act.

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart SS—[Amended]

■ 2. Subpart SS is amended by revising § 272.2201 to read as follows:

§ 272.2201 Texas State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Texas final authorization for the following elements as submitted to EPA in Texas' Base program application for final authorization which was approved by EPA effective on December 26, 1984. Subsequent program revision applications were approved effective on October 4, 1985, February 17, 1987, March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27,

1994, November 26, 1997, December 3, 1997, October 18, 1999, November 15, 1999, September 11, 2000, June 14, 2005, December 29, 2008, July 13, 2009, and May 6, 2011.

(b) The State of Texas has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.*

(1) The Texas statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Texas regulations that are incorporated by reference in this paragraph are available from West Group, 610 Opperman Drive, Eagan, 55123, Attention: Order Entry; Phone: 1–800–328–9352; Web site: *http://west.thomson.com.* You may inspect a copy at EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444, 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/cfr/ibr-locations.html.*

(i) The Binder entitled "EPA Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program," dated July 2009.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon, 2001); Chapter 361, The Texas Solid Waste Disposal Act, sections 361.002, 361.016, 361.017, 361.018, 361.023, 361.024, 361.029, 361.032, 361.033, 361.035, 361.036, 361.037(a), 361.061, 361.063, 361.0635, 361.064, 361.0641, 361.066(b) and (c), 361.067, 361.068, 361.069, 361.079, 361.080(a) and (b), 361.081, 361.083, 361.833, 361.0861(c), 361.0885, 361.090, 361.095(b)–(f), 361.096, 361.097, 361.098, 361.099(a), 361.100, 361.101, 361.102 through 361.109, 361.113, 361.116, 361.272 through 361.275, 361.278, 361.301, 361.321(a) and (b), 361.321(c) (except the phrase "Except as provided by Section 361.322(a)"), 361.321(d), 361.321(e) (except the phrase "Except as provided by Section 361.322(e)"), 361.451, 361.501 through 361.506, and 361.509(a) introductory paragraph, (a)(11), (b), (c) introductory paragraph, and (c)(2); Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.0025(b) and (c), 371.024(a), 371.024(c) and (d), 371.026(a) and (b), 371.028, and 371.043(b).

(ii) Texas Health and Safety Code (THSC) Annotated, (Vernon, 2007 Supplement), effective September 1, 2007: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.0215(b)(2) and (b)(3), 361.0666, 361.078, 361.0791, 361.082 (except 361.082(a) and (f)), 361.084, 361.085, 361.0871(b), 361.088, 361.089, 361.114, and 361.271.

(iii) Texas Water Code (TWC), Texas Codes Annotated (Vernon, 2000), effective September 1, 1999, as amended: Chapter 5, sections 5.102 through 5.105, 5.112, and 5.351; Chapter 7, sections 7.032, 7.051(a), 7.052(c) and (d), 7.053 through 7.062, 7.064 through 7.069, 7.075, 7.101, 7.104, 7.105, 7.107, 7.110, 7.162, 7.163, 7.189, 7.190, 7.252(1), 7.351, 7.353; Chapter 26, section 26.011; and Chapter 27, sections 27.018 and 27.019.

(iv) Texas Water Code (TWC), Texas Codes Annotated (Vernon, 2002), effective September 1, 2001, as amended: Chapter 5, section 5.177; Chapter 7, sections 7.067 and 7.102.

(v) Texas Water Code (TWC), Texas Codes Annotated (Vernon, 2007), effective September 1, 2007, as amended: Chapter 5, sections 5.501 through 5.505, 5.509 through 5.512, 5.515, 5.551 through 5.557; Chapter 7, sections 7.031, 7.052(a),7.052(c) and (d), 7.102, 7.176, and 7.187; Chapter 26, sections 26.001(13), 26.039, 26.341 through 26.367; and Chapter 27, section 27.003.

(vi) Texas Government Code (Vernon, 1998), section 311.027, effective May 11, 1993.

(vii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994: Chapter 305, sections 305.91 through 305.93, 305.98, and 305.99.

(viii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1997, as amended, effective through January 1, 1997: Chapter 281, sections 281.17(f); Chapter 305, sections 305.29(b) through (d), 305.94 and 305.95, 305.97, 305.100, 305.101 (except 305.101(c)), 305.102, 305.103, and 305.105.

(ix) Texas Administrative Code (TAC), Title 30, Environmental Quality, 2008, as amended, effective through December 31, 2007: Chapter 39, sections 39.13 (except (10)), 39.105, 39.107, 39.109, 39.413 (except (10)); Chapter 50, sections 50.13, 50.19, 50.39, 50.113 (except (d)), 50.119, and 50.139; Chapter 55, sections 55.27 (except (b)), 55.201 (except as applicable to contested case hearings), and 55.211 (except as applicable to contested case hearings); Chapter 70, section 70.10; Chapter 281, sections 281.1 (except the clause "except as provided by * * * Prioritization Process)"), 281.2 introductory paragraph, 281.2(4), 281.3(a) and (b), 281.5 (except the clause "Except as provided by * * * Discharge Permits)", the phrase "radioactive material", and the phrase "subsurface area drip dispersal systems"), 281.17(d) (except the references to radioactive material licenses), 281.17(e), 281.18(a) (except for the sentence "For applications for radioactive * * * within 30 days.", 281.19(a) (except the last sentence), 281.19(b) (except the phrase "Except as provided in subsection (c) of this section,"), 281.20, 281.21(a) (except the phrase "and the Texas Radiation Control Act * * * Chapter 401.", the acronym "TRCA", and the phrase "subsurface area drip dispersal systems"), 281.21(b), 281.21(c) (except the phrase "radioactive materials," in 281.21(c)(2)), 281.21(d), 281.22(a) (except the phrase "For applications for radioactive * * * to deny the license."), 281.22(b) (except the phrase "or an injection well," in the first sentence and the phrase "For underground injection wells * * * the same facility or activity."), 281.23(a), and 281.24; Chapter 305, sections 305.64(d) and (f), 305.66(c), 305.66(e) (except for the last sentence), 305.66(f) through (l), 305.123 (except the phrases "and 401 * * * regulation)" and "and 32"), 305.125(1) and (3), 305.125(20), 305.127(1)(B)(i), 305.127(4)(A) and (C), 305.127(6), 305.401(a), 305.401(b) (except the text "§ 39.3 of this title (relating to Purpose) * * * § 55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment"), 305.401(d) through (h); and Chapter 335, sections 335.2(b), 335.43(b), 335.206, 335.391 through 335.393.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon 2001): Chapter 361, The Texas Solid Waste Disposal Act, sections 361.131 through 140; Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.021, 371.022, 371.024(e), 371.0245, 371.0246, 371.025, and 371.026(c).

(ii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 2008, as amended, effective through December 31, 2007: Chapter 305, sections 305.53 and 305.64(b)(4); Chapter 335, sections 335.321 through 335.332, Appendices I and II, and 335.401 through 412.

(4) *Unauthorized State Amendments and Provisions.* (i) The following authorized provisions of the Texas regulations include amendments published in the Texas Register that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at paragraph (c)(1)(i) of this section, EPA will enforce the State provisions that are actually authorized by EPA. The effective dates of the State's authorized provisions are listed in the Table below. The actual State regulatory text authorized by EPA (*i.e.,* without the unauthorized amendments) is available as a separate document, *Addendum to the EPA-Approved Texas Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, July, 2009.* Copies of the document can be obtained from U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202.

State provision (December 31, 2007, except as indicated)	Effective date of authorized provision	Unauthorized State amendments	
		Texas Register reference	Effective date
335.2(c)	11/7/91	18 TexReg 2799	5/12/93
		18 TexReg 8218	11/23/93
335.6(a)	7/29/92	18 TexReg 2799	5/12/93
		22 TexReg 12060	12/15/97
		23 TexReg 10878	10/19/98
335.6(c) introductory paragraph	7/29/92	17 TexReg 8010	11/27/92
		20 TexReg 2709	4/24/95
		20 TexReg 3722	5/30/95
		21 TexReg 1425	3/1/96
		21 TexReg 2400	3/6/96
		22 TexReg 12060	12/15/97
		23 TexReg 10878	10/19/98
		26 TexReg 9135	11/15/01
335.6(g)	7/29/92	18 TexReg 3814	6/28/93
		22 TexReg 12060	12/15/97
		23 TexReg 10878	10/19/98
335.10(b)(22) (December 31, 2001)	7/27/88	17 TexReg 8010	11/27/92
335.24(b) introductory paragraph	3/1/96	21 TexReg 10983	11/20/96
		23 TexReg 10878	10/19/98
335.24(c) introductory paragraph	3/1/96	21 TexReg 10983	11/20/96
		23 TexReg 10878	10/19/98
335.41(c)	9/1/86	18 TexReg 8218	11/23/93
335.45(b)	9/1/86	17 TexReg 5017	7/29/92
335.204(a)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(b)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(b)(6)	5/28/86	16 TexReg 6065	11/7/91
335.204(c)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(d)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(e)(6)	5/28/86	16 TexReg 6065	11/7/91

(ii) Additionally Texas has partially or fully adopted, but is not authorized to implement, the Federal rules that are listed in the following table. The EPA will continue to implement the Federal HSWA requirements for which Texas is not authorized until the State receives specific authorization for those requirements. The EPA will not enforce the non-HSWA Federal rules although they may be enforceable under State law. For those Federal rules that contain both HSWA and non-HSWA requirements, the EPA will enforce only the HSWA portions of the rules.

Federal requirement	**Federal Register** reference	Publication date
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision (HSWA) (Checklist 152)	61 FR 16290	April 12, 1996.
Clarification of Standards for Hazardous Waste LDR Treatment Variances (SWA) (Checklist 162).	62 FR 64504	December 5, 1997.
Post-Closure Permit Requirement and Closure Process (HSWA and Non-HSWA) (Checklist 174)	63 FR 56710	October 22, 1998.
Organobromine Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions (HSWA) (Checklist 187).	64 FR 36365	June 8, 2000.
Zinc Fertilizers Made from Recycled Hazardous Secondary Materials (HSWA and Non-HSWA) (Checklist 200).	67 FR 48393	July 24, 2002.
Modification of the Hazardous Waste Manifest System (HSWA and Non-HSWA) (Checklist 207).	70 FR 10776	March 4, 2005.
	70 FR 35034	June 16, 2005.

Federal requirement	**Federal Register** reference	Publication date
Methods Innovation Rule and SW–846 Update IIIB (HSWA and Non-HSWA) (Checklist 208).	70 FR 34538	June 14, 2005.
	70 FR 44150	August 1, 2005.
Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury Containing Equipment (Non-HSWA) (Checklist 209).	70 FR 45508	August 5, 2005.

(iii) Texas has chosen not to adopt, and is not authorized to implement, the following optional Federal rules:

Federal requirement	**Federal Register** reference	Publication date
NESHAPS Second Technical Correction, Vacatur (Non-HSWA) (Checklist Rule 188.1).	66 FR 24270	May 14, 2001.
Storage, Treatment, Transportation and Disposal of Mixed Waste (Non-HSWA) (Checklist 191).	66 FR 27218	May 16, 2001.
Inorganic Chemical Manufacturing Waste Identification and Listing (HSWA/Non-HSWA) (Checklist Rule 195.1).	67 FR 17119	April 9, 2002.
Hazardous Air Pollutant Standards for Combustors: Interim Standards (HSWA/Non-HSWA) (Checklist 197).	67 FR 6792	February 13, 2002.
Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium, Mercury-Containing Batteries and Silver-Containing Batteries (HSWA) (Checklist 201).	67 FR 62618	October 7, 2002.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards (Non-HSWA) (Checklist 203).	68 FR 44659	July 30, 2003.
National Environmental Performance Track Program (Non-HSWA) (Checklist 204).	69 FR 21737	April 22, 2004.
	69 FR 62217	October 25, 2004.
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks (Non-HSWA) (Checklist 205).	69 FR 22601	April 26, 2004.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Texas, signed by the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) on March 10, 2009, and by the EPA Regional Administrator on April 22, 2009, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Texas on May 22, 1984 and revisions, supplements, and addenda to that Statement dated November 21, 1986, July 21, 1988, December 4, 1989, April 11, 1990, July 31, 1991, February 25, 1992, November 30, 1992, March 8, 1993, January 7, 1994, August 9, 1996, October 16, 1996, as amended February 7, 1997, March 11, 1997, January 5, 1999, November 2, 1999, March 1, 2002, and July 16, 2008 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Texas" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Texas

The statutory provisions include:

Texas Health and Safety Code (THSC) Annotated, (Vernon 2001): Chapter 361, The Texas Solid Waste Disposal Act, sections 361.003 (except (3), (4), (19), (27), (35), and (39)), 361.019(a), 361.0235, 361.066(a), 361.087, 361.093, 361.094, 361.095(a), 361.099(b), and 361.110; Chapter 371, The Texas Oil Collection, Management, and Recycling Act, sections 371.003, 371.024(b), 371.026(d), and 371.041.

Texas Health and Safety Code (THSC) Annotated, (Vernon 2007 Supplement): Chapter 361, The Texas Solid Waste Disposal Act, sections 361.082(a) and (f), 361.086, and 361.0871(a).

Copies of the Texas statutes that are incorporated by reference are available from West Group, 610 Opperman Drive, Eagan, 55123, Attention: Order Entry; Phone: 1–800–328–9352; Web site: *http://west.thomson.com.*

The regulatory provisions include:

Texas Administrative Code, (TAC), Title 30, Environmental Quality, 2008, as amended, effective through December 31, 2007. Please note that the 2008 TAC, Title 30 is the most recent version of the Texas authorized hazardous waste regulations. For a few provisions, the authorized version is found in the TAC, Title 30, Environmental Quality dated January 1, 1994, January 1, 1997, December 31, 1999, or December 31, 2001. Texas made subsequent changes to these provisions but these changes have not been authorized by EPA. The provisions from earlier sets of regulations are noted in the table below.

Chapter 3, Section 3.2(25) "Person"; Chapter 20, Section 20.15; Chapter 35, Section 35.402(e); Chapter 39, Sections 39.5(g), 39.11, 39.103(a)(2), (b), (d)(4), and (g), 39.405(f)(1), 39.411 (except (b)(4)(B), (b)(10), (11), and (13)), 39.503(d) (except the reference to 39.405(h) in 39.503(d) introductory paragraph); Chapter 55, Sections 55.25(b)(1) through (3), 55.152(a)(3), 55.152(b), 55.154, and 55.156(b)(1); Chapter 281, Section 281.3(c);

Chapter 305, Subchapter A—General Provisions, Sections 305.1(a) (except the reference to Chapter 401, relative to Radioactive Materials); 305.2 introductory paragraph (except the references to Chapter 401, relative to Radioactive Materials and the reference to TWC 32.002); 305.2(1) (except the phrase "or a post-closure order"); 305.2(6), (11), (12), (14), (15), (19), (20), (24), (26), (27), (31) and (40)–(42); 305.3;

Chapter 305, Subchapter B—Emergency Orders, Temporary Orders, and Executive Director Authorizations, Sections 305.29(a) (January 1, 1997); 305.30;

Chapter 305, Subchapter C—Application for Permit, Sections 305.41 (except the reference to Chapter 401, relative to Radioactive Materials, the reference to TWC Chapter 32, and the last sentence addressing post-closure orders); 305.42(a) (except the phrase "or who requests a post-closure order * * * to obtain a post-closure order"); 305.42(b) and (d); 305.43(b) (except the two phrases "or post-closure orders"); 305.44 (except (d), the phrase "or post-closure orders" in (a)(1), and the phrase "or a post-closure order" in (c)); 305.45(a) (except (a)(7)(I) and (J), and the phrase "§ 305.54 of this title * * * Content of Applications)," in 305.45(a)(8)(C)); 305.45(b); 305.47 (except the phrases "or a recipient of a post-closure order" and "or order"); 305.50(a) introductory paragraph–(a)(3) (except the last two sentences in 305.50(a)(2)); 305.50(a)(4) introductory paragraph and (a)(4)(A); 305.50(4)(B)–(D) (January 1, 1994); 305.50(a)(4)(G); 305.50(a)(5)(8), (13) and (14); 305.51;

Chapter 305, Subchapter D—Amendments, Modifications, Renewals, Transfers, Corrections, Revocations, and Suspension of Permits, Sections 305.61; 305.62(a) (except the phrase in the first sentence "§ 305.70 of this title * * * Solid Waste Class I Modifications" and the phrase in the fifth sentence "If the permittee requests a modification of a municipal solid waste permit * * * § 305.70 of this title."); 305.62(b); 305.62(c) (January 1, 1997); 305.62(d) (except (d)(6)); 305.62(e)–(h); 305.63(a) introductory paragraph (except first sentence); 305.63(a)(1) and (2); 305.63(a)(3) (except last sentence); 305.63(a)(4)–(6); 305.64(a); 305.64(b) (except (b)(4) and (b)(5)); 305.64(c); 305.64(e); 305.64(g) (December 31, 1999); 305.66(a) (except (a)(7)–(a)(9)); 305.66(d); 305.67(a) and (b); 305.69(a)–(h) (January 1, 1997); 305.69(i)–(k) (except (k) A.8–A.10);

Chapter 305, Subchapter F—Permit Characteristics and Conditions, Sections 305.121 (except the phrases "radioactive material disposal" and "subsurface area drip dispersal systems"); 305.122(a)–(c); 305.124; 305.125 introductory paragraph; 305.125(2) and (4); 305.125(5) (except the last two sentences); 305.125(6) (January 1, 1997); 305.125 (7) and (8); 305.125(9) (except (9)(C)); 305.125(10) (except the phrase "and 32"); 305.125(11) (except the phrase "as otherwise required by Chapter 336 of this title" relative to Radioactive Substances in (11)(B)); 305.125(12); 305.125(13) (December 31, 2001); 305.125(14)—(19), and (21); 305.127 introductory paragraph; 305.127(1)(B)(iii); 305.127(1)(E) and (F); 305.127(2); 305.127(3)(A) (except the last two sentences); 305.127(3)(B) and (C); 305.127(4)(B); 305.127(5)(C); 305.128;

Chapter 305, Subchapter G—Additional Conditions for Hazardous and Industrial Solid Waste Storage, Processing, or Disposal Permits, Sections 305.141 through 305.145; 305.146 introductory paragraph and (1) (January 1, 1997); 305.150;

Chapter 305, Subchapter I—Hazardous Waste Incinerator Permits, Sections 305.171 through 305.175;

Chapter 305, Subchapter J—Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses, Sections 305.181 through 305.184;

Chapter 305, Subchapter K—Research, Development and Demonstration Permits, Sections 305.191 through 305.194;

Chapter 305, Subchapter L—Groundwater Compliance Plan, Section 305.401(c);

Chapter 305, Subchapter Q—Permits for Boilers and Industrial Furnaces Burning Hazardous Waste, Sections 305.571; 305.572 (except (a)(6)); 305.573;

Chapter 324—Used Oil, Sections 324.1 through 324.2(6); 324.2 "Secondary containment" (January 1, 1997); 324.2(8) and (9); 324.3 (except 324.3(5)); 324.4; 324.6; 324.7; 324.11 through 324.14; 324.15 (January 1, 1997); 324.16; 324.21;

Chapter 335, Subchapter A—Industrial Solid Waste and Municipal Hazardous Waste in General, Sections 335.1 introductory paragraph (December 31, 2001); 335.1(1)–(4), (6)–(8), (10)–(12), (16), (17), (21), (22), (24)–(28), (31); 335.1(32) "Designated facility" (December 31, 2001); 335.1(33), (36)–(42), (43) (except for the phrase "or is used for neutralizing the pH of non-hazardous industrial solid waste"), (44)–(46), (48)–(53), (55)–(61), (64)–(73), (75)–(82), (83)–(86) (except the phrase "solid waste or" in each subsection), (87), (88)–(89) (except the phrase "solid waste or" in both subsections); 335.1(86) "Manifest" and (87) "Manifest document number" (December 31, 2001); 335.1(92), (93), (94) (except the phrase "solid waste or"), (95)–(108); 335.1(110) (except the phrase "solid waste or"), (111), (116), (117) (except the phrase "solid waste or"), (118)–(121), (123), (125)–(129), (131), (132), (133)(A)–(G) (except the phrase "Except for materials described in subparagraph (H) of this paragraph." at (133)(D) and (G) introductory paragraphs), (133)(I) and (J), (134), (136)–(145) (except the phrase "solid waste or" at (138), (141) and (143)), (146) (except the phrase "or industrial solid"), (147), (148), (149) and (150) (except the phrase "or industrial solid" in both subsections), (152)–(154), (155) (except the phrase "solid waste or"), (156)–(161), (162) (except the phrase "or industrial solid"), (163), (164) and (165) (except the phrase "solid waste or"); 335.2(a) and (c); 335.2(e)–(g); 335.2(i) (except the phrases "or decontamination" and "or obtain an order in lieu of a post-closure permit * * * of this section"); 335.2(j) and (l); 335.4; 335.5 (except (d)); 335.6(a); 335.6(b) (January 1, 1997); 335.6(c); 335.6(d) (except the last sentence) (January 1, 1994); 335.6(e) (January 1, 1994); 335.6(f)–(j); 335.7 (December 31, 1999); 335.8(a)(1) and (2); 335.9(a) (except (a)(2) and (3)); 335.9(a)(2) and (3) (January 1, 1997); 335.9(b) (January 1, 1994); 335.10(a) introductory paragraph and (a)(1) (except references to "class 1 wastes") (January 1, 1994); 335.10(a)(3) (except the phrase ", unless the generator is identified in paragraph (2) of this section") (December 31, 2001); 335.10(a)(4) (December 31, 2001); 335.10(a)(6); 335.10(b) (except 335.10(b)(5), (8), and (18)) (December 31, 2001); 335.10(b)(5), (8), and (18) (January 1, 1994); 335.10(c) (except the phrase "the United States customs official,") (December 31, 2001); 335.10(d) and (e) (December 31, 2001); 335.10(f); 335.11 (except 11(d)) (December 31, 2001); 335.12 (except 335.12(a)(5) and (d)); 335.13(a) (January 1, 1997); 335.13(c) and (d) (January 1, 1994); 335.13(e) and (f) (January 1, 1997); 335.13(g) (January 1, 1994); 335.14; 335.15 introductory paragraph (January 1, 1994); 335.15(1); 335.17(a); 335.18(a); 335.19 (except 335.19(d)); 335.20 through 335.22; 335.23 (except (2)); 335.23(2) (January 1, 1994); 335.24(a)–(f); 335.24(m) and (n); 335.29; 335.29(2) and (3) (December 31, 2001); 335.30; 335.31;

Chapter 335, Subchapter B—Hazardous Waste Management General Provisions, Sections 335.41(a)–(c); 335.41(d) (except (d)(1) and (d)(5)–(8)); 335.41(d)(1) (December 31, 2001); 335.41(e); 335.41(f) (except (f)(2)(A)(iii)); 335.41(f)(2)(A)(iii) (December 31, 2001); 335.41(g) and (h); 335.41(j); 335.43 and 335.44 (December 31, 1999); 335.45; 335.47 (except 335.47(b) and the second sentence in (c)(3)); 335.47(b) (December 31, 1999);

Chapter 335, Subchapter C—Standards Applicable to Generators of Hazardous Waste, Sections 335.61 (except (f)); 335.62; 335.63; 335.65; 335.66; 335.67 and 335.68 (December 31, 2001); 335.69 (except (i) and (m)); 335.70; 335.71 (January 1, 1994); 335.73 through 335.75; 335.76 (except 335.76(d) and (h)); 335.76(d) (December 31, 2001); 335.77; 335.78 (except (b), (d)(2), (e) introductory paragraph, (f)(2), and (g)(2)); 335.78(b), (e) introductory paragraph, (f)(2), and (g)(2) (January 1, 1997);

Chapter 335, Subchapter D—Standards Applicable to Transporters of Hazardous Waste, Sections 335.91 (except (e)); 335.92; 335.93 (except (e)); 335.93(e) (December 31, 1999); 335.94 (except the phrase "owned or operated by a registered transporter" in (a) introductory paragraph);

Chapter 335, Subchapter E—Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, Sections 335.111(a)–(c); 335.112(a) (except (a)(4)–(7) and (a)(17)); 335.112(a)(4)–(6) (December 31, 2001); 335.112(a)(7) (January 1, 1997); 335.112(b) (except (b)(4)(I) and (J), and (b)(7)); 335.112(c); 335.113; 335.114 (January 1, 1997); 335.115 introductory paragraph (January 1, 1997); 335.115(1)–(4); 335.116 (except (g) and the phrase "and (g)" at (b)); 335.117 (except (a)(2)(B), (a)(2)(C), and (b)(2)); 335.117(a)(2)(B), (a)(2)(C), and (b)(2) (January 1, 1997); 335.118(a); 335.118(b) (December 31, 2001); 335.119(a) and (b) (December 31, 2001); 335.120 through 335.127;

Chapter 335, Subchapter F—Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, Sections 335.151(a)–(c); 335.152 (except (a)(4)–(6)); 335.152(a)(4) (January 1, 1997); 335.152(a)(5) (December 31, 2001); 335.152(a)(6) (January 1, 1997); 335.152(b); 335.152(c) (except (c)(5)–(7)); 335.153; 335.154 (January 1, 1997); 335.155 introductory paragraph (January 1, 1997); 335.155(1)–(3); 335.156(a) introductory paragraph through (2) (except the phrase "or (3)" at (a)(1) and the phrase "Except as provided * * * subsection," at (a)(2)); 335.156(b) and (c); 335.157 through 335.166; 335.167(a) (except the phrase "or post-closure order"); 335.167(b) and (c) (December 31, 1999); 335.168 through 335.178;

Chapter 335, Subchapter G—Location Standards for Hazardous Waste Storage, Processing, or Disposal, Sections 335.201(a) (except (a)(3)); 335.201(c); 335.202 introductory paragraph; 335.202(2), (4), (9)–(11), (13), (15)–(18); 335.203; 335.204(a) introductory paragraph—(a)(5); 335.204(b)(1)–(6); 335.204(c)(1)–(5); 335.204(d)(1)–(5); 335.204(e) introductory paragraph; 335.204(e)(1) introductory paragraph (except the phrase "Except as * * * (B) of this paragraph," and the word "event" at the end of the paragraph); 335.204(e)(2)–(7); 335.204(f); 335.205(a) introductory paragraph–(a)(2) and (e);

Chapter 335, Subchapter H—Standards for the Management of Specific Wastes and Specific Types of Facilities, Sections 335.211; 335.212; 335.213 (January 1, 1997); 335.214; 335.221; 335.222 through 335.225; 335.241(except (b)(4) and (d)); 335.241(d) (January 1, 1997); 335.251; 335.261 (except (e)) (December 31, 2001); 335.271; 335.272;

Chapter 335, Subchapter O—Land Disposal Restrictions, Section 335.431;

Chapter 335, Subchapter R—Waste Classification, Sections 335.504 introductory paragraph—(3); 335.504(4) (December 31, 1999).

Copies of the Texas regulations that are incorporated by reference are available from West Group, 610 Opperman Drive, Eagan, 55123, ATTENTION: Order Entry; Phone: 1–800–328–9352; Web site: *http://west.thomson.com.*

* * * * *

[FR Doc. 2011–4911 Filed 3–4–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 11–323; MB Docket No. 09–189; RM–11564]

Radio Broadcasting Services; Kualapuu, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Kemp Communications, Inc., allots FM Channel 296C2 at Kualapuu, Hawaii. Channel 296C2 can be allotted at Kualapuu, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 21–10–57 NL and 157–13–26 WL, with a site restriction of 19.4 km (12 miles) west of the community. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Effective April 4, 2011.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–189, adopted February 16, 2011, and released February 18, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Kualapuu, Channel 296C2.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2011–5091 Filed 3–4–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 101207606–1138–02]

RIN 0648–XA082

Listing Endangered and Threatened Species: Correction To Codify in the Code of Federal Regulations Application of Take Prohibitions to the Upper Columbia River Steelhead Distinct Population Segment

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

ACTION: Final rule; correcting amendment.

SUMMARY: We, NMFS, announce a correcting amendment to the Code of Federal Regulations to clarify that take prohibitions under section 4(d) of the Endangered Species Act of 1973 (ESA) apply to the Upper Columbia River steelhead distinct population segment (DPS).

DATES: Effective March 7, 2011.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice contact Eric Murray, NMFS, Northwest Region, 503–231–2378; or Marta Nammack, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background and Correcting Amendment

We first listed the Upper Columbia River steelhead DPS under the ESA in 1997 as an endangered species (62 FR 43937; August 18, 1997). In January 2006, we conducted a status review and downgraded the DPS's status to threatened (71 FR 834; January 5, 2006). We published proposed and final rules applying ESA section 4(d) protections to the DPS on June 14, 2004 and February 1, 2006, respectively (69 FR 33102; 71 FR 5178). In 2007, a Federal district court set aside the downgraded listing; however, in 2009, the Ninth Circuit Court of Appeals reversed the district court's decision, thereby reinstating the January 2006 threatened listing and February 2006 protective regulations. On August 24, 2009, we published a **Federal Register** document summarizing the results of the litigation and the ESA status reviews and clarifying that the January 2006 threatened listing and February 2006 protective regulations remain in effect for the DPS (74 FR 42605).

In our August 2009 **Federal Register** notice, we explained that, due to a previous clerical error, the Upper Columbia River steelhead DPS had been inadvertently dropped from the enumeration of threatened species at 50 CFR 223.102(c). The August 2009 notice included a correcting amendment to reinstate the Upper Columbia River steelhead DPS to our list of threatened species at 50 CFR 223.102(c)(25). That correcting amendment, however, failed to update the cross-references at 50 CFR 223.203, which identifies the threatened anadromous fish subject to protections under ESA section 4(d). This correcting amendment remedies that oversight.

Classification

The Assistant Administrator finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment, because it is impracticable, unnecessary, and contrary to the public interest. NMFS fully intended the Upper Columbia River steelhead DPS to be subject to the ESA section 4(d) protections and expressly stated this intent in the February 2006 final rule. NMFS also previously provided public notice in the **Federal Register** and considered public comments on the 2006 final rule. However, due to a clerical error, the conforming change is not currently reflected in the regulations. In order to avoid regulatory confusion and ensure continuous protections and enforcement capability for the Upper Columbia River steelhead DPS, the Assistant Administrator waives the requirement for prior notice and opportunity for public comment.

For the same reasons above, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness and makes this rule effective immediately upon publication.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

It has been determined that this rule is not significant for purposes of Executive Order 12866.

References

Copies of previous **Federal Register** notices and related reference materials are available on the Internet at *http://www.nwr.noaa.gov,* or upon request (*see* **FOR FURTHER INFORMATION CONTACT** section above).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: March 1, 2011.

Samuel D. Rauch III,

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

For the reasons set forth in the preamble, 50 CFR part 223 is corrected by making the following correcting amendment:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

■ 2. In § 223.203, paragraphs (a) and (b) are revised to read as follows:

§ 223.203 Anadromous fish.

* * * * *

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to fish with an intact adipose fin that are part of the threatened species of salmonids listed in § 223.102(c)(3) through (c)(25).

(b) *Limits on the prohibitions.* The limits to the prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(c)(3) through (c)(25) are described in the following paragraphs (b)(1) through (b)(13):

* * * * *

[FR Doc. 2011–5109 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA260

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters) length overall using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the A season apportionment of the 2011 total allowable catch of Pacific cod to be harvested.

DATES: Effective March 1, 2011, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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 apportionment of the 2011 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the Bering Sea and Aleutian Islands management area (BSAI) is 1,710 metric tons (mt) for the period 1200 hrs, A.l.t., January 1, 2011, through 1200 hrs, A.l.t., April 30, 2011, as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

The Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 1,500 mt of the A season apportionment of the 2011 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 1,500 mt of Pacific cod from the A season jig gear apportionment to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in the final 2011 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) are revised as follows: 810 mt to the A season apportionment for vessels using jig gear and 5,555 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

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 reallocation of Pacific cod specified from jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. 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 as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 1, 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: March 2, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–5075 Filed 3–2–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 44
Monday, March 7, 2011

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–92; NRC–2008–0492]

James Luehman; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is denying a petition for rulemaking (PRM) submitted by James Luehman (the petitioner). The petitioner requests that the NRC amend the NRC's standard for sustaining a whistleblower retaliation violation of the Employee Protection Rule. The NRC is denying PRM–50–92 for the reasons stated in this document.

ADDRESSES: Publicly available documents related to this petition for rulemaking may be accessed using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Supporting materials related to this petition for rulemaking can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2008–0492. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly Sexton, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1151; e-mail: *Kimberly.Sexton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

Title 10 of the *Code of Federal Regulations* (10 CFR) § 2.802, "Petition for Rulemaking," provides an opportunity for any interested person to petition the Commission to issue, amend, or rescind any regulation and on June 26, 2008, the petitioner submitted a PRM requesting that the NRC amend 10 CFR 50.7, "Employee Protection." Section 50.7 prohibits discrimination by an NRC licensee, among others, against an employee for engaging in certain protected activities.[1] This regulation is commonly known as a "whistleblower" protection provision. Similar provisions are found in 10 CFR parts 19, 30, 40, 52, 60, 61, 63, 70, 71, 72, and 76.

The legal standard by which the NRC determines whether a violation of Section 50.7 has occurred was decided by the Commission in the *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), CLI–04–24, 60 NRC 160 (2004) (*TVA*) enforcement proceeding. In *TVA,* the Commission held that in evaluating whether a violation of Section 50.7 has occurred, licensing boards must address two questions:

1. Did the NRC Staff show, by a preponderance of the evidence, that protected activity was a "contributing factor" in an unfavorable personnel action?
2. Did the employer show, by "clear and convincing evidence," that it would have taken the same personnel action regardless of the protected activity?

TVA, CLI–04–24, 60 NRC at 194.

These two questions were adapted by the Commission from Section 211 of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. 5851. Section 211 offers protection, through the U.S. Department of Labor (DOL), to employees who have been fired or otherwise discriminated against as a result of engaging in protected activities. S. Rep. No. 95–848, at 29 (1978). Under Section 211, to prove a violation, employees must demonstrate by a preponderance of the evidence that the protected activity "was a contributing factor in the unfavorable personnel action alleged in the complaint." Relief to the employee, however, may not be granted if the employer can demonstrate "by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior." Public Law 102–486, Section 2902(d), 106 Stat. 2776, 3123–24 (amending 42 U.S.C. 5851(b)).

The petitioner's proposed new regulatory standard would allow the NRC, in evaluating the evidence, to conclude that a whistleblower retaliation violation has occurred without regard to whether the licensee has demonstrated by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of protected activity. Thus, the petitioner's proposed approach would apply the clear and convincing evidentiary standard not to the question of whether a violation has occurred but to the determination of the sanction to be imposed for the violation.

The petitioner requests that the NRC amend its standard for sustaining a whistleblower retaliation violation of the Employee Protection Rule based on two asserted changes in circumstance reflecting that a departure from *TVA* is now needed. First, the petitioner states that there is sufficient anecdotal evidence to suggest that the Commission's *TVA* decision may be having an adverse effect on how potential filers of complaints view NRC handling of discrimination cases, as well as how such cases are being evaluated by the NRC staff. The petitioner cites as evidence "a significant recent decline in the number of discrimination allegations submitted

[1] The NRC can take an enforcement action, including orders and civil penalties, against licensees, applicants, or contractors or subcontractors of licensees or applicants who violate Section 50.7 and may do so because the Atomic Energy Act of 1954 authorizes the NRC to prohibit employee discrimination that is based on protected activity, 42 U.S.C. 2201(c) and (o), 2133, 2236(a), and provides broad authority for the NRC to protect workers against retaliation for raising safety concerns. *Union Electric Co.* (Callaway Plant, Units 1&2), ALAB–527, 9 NRC 126 (1979).

as well as a decline in the percentage of discrimination allegations that were determined to meet the threshold for investigation." Second, the petitioner states that because of the probable new construction of power reactors under 10 CFR part 52 and the Department of Energy's application for a high-level waste repository, a clarification of the Employee Protection Rule is necessary.

In support of this request, the petitioner provides eight arguments for changing the Commission ruling in *TVA.* Each of the arguments is described below.

The petitioner first argues that the addition of the clear and convincing test in effect raises the standard for concluding a violation exists from a preponderance of the evidence (meaning that it is more likely than not that a violation occurred) to a higher standard of "somewhere between preponderance [of the evidence] and clear and convincing [evidence]." Accordingly, the petitioner views *TVA* as making it more difficult to prove a violation of the Employee Protection Rule. The petitioner argues that the legal requirements of Section 50.7 of the Employee Protection Rule and Section 211 of the ERA are satisfied by the lesser standard of evidence, *i.e.* when it is shown by a preponderance of the evidence that discrimination was "a contributing factor" in the adverse action against the employee. The petitioner states that the licensee may raise the defense that clear and convincing evidence demonstrates it would have taken the same unfavorable personnel action in the absence of protected activity only as a defense in the sanction determination process, not as a defense to the question of whether a violation has occurred.

Second, the petitioner states that the additional clear and convincing test identified in *TVA* directly conflicts with the present language of Section 50.7(d). That provision provides that adverse actions taken by an employer, or others, against an employee may be predicated upon nondiscriminatory grounds and that an employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations. The petitioner argues that *TVA* changed the application of Section 50.7(d) such that "the prohibition against discrimination now applies, if and only if, the employer is unable to show by clear and convincing evidence that the adverse action would have been taken in absence of the protected activity." The petitioner believes this "will cause and in fact may now be causing some number of people to not enter the process given the reduced chances of success."

The petitioner's third, fourth, and fifth arguments essentially state that the clear and convincing test does not exist in Section 211 of the ERA for the determination of a violation and thus should not be used by the NRC for that purpose. The petitioner cites the decision of an NRC Atomic Safety and Licensing Board (Licensing Board) in *Tennessee Valley Authority,* LBP–03–10, 57 NRC 553 (2003) as support for modifying the Section 50.7 Employee Protection Rule so that the "clear and convincing" question is considered in the sanction determination process, not in determining whether a violation has occurred .

Sixth, the petitioner states that there is a possibility of an inconsistent regulatory message if the DOL finds a violation of Section 211 of the ERA but the NRC does not find a violation of the Employee Protection Rule of Section 50.7 for the same set of underlying facts.

Seventh, the petitioner states that the Commission's decision in *TVA* could cause employees to fear retaliation because *TVA* demonstrates "that some amount of retaliation is in fact acceptable."

Finally, the petitioner states that the test established in *TVA* is not necessary to ensure that the staff appropriately applies the Section 50.7 Employee Protection Rule.

The NRC reviewed the request for rulemaking and determined that the request met the minimum sufficiency requirements of 10 CFR 2.802 and therefore was considered as a petition for rulemaking. Accordingly, the NRC docketed the request as PRM–50–92 on July 9, 2008. The NRC notified the petitioner of this decision by letter dated July 15, 2008. Due to this PRM's primary focus on the continued viability of a Commission adjudicatory decision, it was deemed a legal matter and thus, the NRC did not prepare a notice of receipt and request for comment, and instead began consideration of the request.

Background

In *TVA,* the NRC staff issued an $110,000.00 Order Imposing Civil Monetary Penalty to the Tennessee Valley Authority for its non-selection of an employee to a competitive position due, in part, to that employee's having engaged in protected whistleblowing activities. *Tennessee Valley Authority,* LBP–03–10, 57 NRC 553. The Tennessee Valley Authority did not deny that the employee had engaged in protected activities; however, it stated that the employee's non-selection was made solely for legitimate business reasons and requested a hearing on the imposition of the penalty. After a 25-day evidentiary hearing, the Licensing Board determined that the Tennessee Valley Authority violated Section 50.7 based solely on a standard of "whether the Staff can prove by a preponderance of the evidence that the complainant's protected activity was a contributing factor in an adverse action." Having found a violation, the Licensing Board then reduced the civil penalty to $44,000.00 because of "the small role that protected activities may have played in leading to the adverse action."

The Tennessee Valley Authority appealed the Licensing Board's ruling to the Commission. The Commission agreed to review the decision, and also raised its own question of whether the Licensing Board applied the correct legal evidentiary standard when determining whether to mitigate a civil penalty arising from a violation of the Employee Protection Rule. *TVA,* CLI–03–09, 58 NRC 39. On appeal, the Tennessee Valley Authority argued that the Licensing Board erred by not following the evidentiary framework established in discrimination cases like *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973) and *Price Waterhouse* v. *Hopkins,* 490 U.S. 228 (1989). *Id.* at 190. The NRC staff, on the other hand, provided essentially the same argument as the petitioner does now, that it need only prove by a preponderance of the evidence that the complainant's protected activity was a contributing factor in an unfavorable personnel action without looking to whether the employer would have taken the same action in the absence of the complainant's protected activity.[2]

The Commission disagreed with the NRC staff and decided that it was appropriate for Licensing Boards in

[2] Before the Licensing Board, the staff argued that "[t]he appropriate standard to apply in a section 50.7 violation case is whether the Staff has proven by a preponderance of the evidence that the complainant's protected activity was a contributing factor in an unfavorable personnel action. The Board should not consider whether the employer can demonstrate by clear and convincing evidence that it would have taken the same action in the absence of the complainant's protected activity. A section 50.7 violation is based on the employer's actual motives; if one of the employer's motives for taking the adverse action was the complainant's protected activity, the employer has violated section 50.7." "NRC Staff Pretrial Legal Brief" (Mar. 1, 2002) (ADAMS Accession No. ML020660033). The staff maintained its position before the Commission on appeal. "NRC Staff's Brief in Response to CLI–03–10 Regarding Standards by Which a Licensing Board Should Mitigate a Civil Penalty in a Discrimination Case" (Oct. 2, 2003) (ADAMS Accession No. ML032820036).

whistleblower discrimination cases to ask two questions, adapted from Section 211 of the ERA, to determine whether a violation of 10 CFR 50.7 exists:

> 1. Did the NRC Staff show, by a preponderance of the evidence, that protected activity was a "contributing factor" in an unfavorable personnel action?
> 2. Did the employer show, by "clear and convincing evidence," that it would have taken the same personnel action regardless of the protected activity?

TVA, CLI–04–24, 60 NRC at 194. The Commission attempted to "make[] clear that engaging in protected activities does not immunize employees 'from discharge or discipline for legitimate reasons or from adverse action dictated by non-prohibited considerations.' " *Id.* at 192–93. In establishing this test, the Commission believed that employers should be offered "the same right of defense in an NRC enforcement proceeding as Section 211 gives them in a Department of Labor compensation proceeding—*i.e.,* the right to defend against a whistleblower discrimination charge on the ground that they would have taken the same personnel action regardless of the employee's protected activities." *Id.* at 192–193. The clear and convincing test dovetails with Section 50.7(d) to provide that protection and while the Commission looked to, and tracked, Section 211's evidentiary framework, it emphasized that Section 50.7 does not adopt it. *Id.* at 194.

The Commission also defined what constitutes a "contributing factor" in an adverse employment action. Although both parties in *TVA* agreed that Section 211's "contributing factor" causation standard should apply, the parties could not agree on what that standard entails. *TVA,* CLI–04–24, 60 NRC at 195. First, the Commission looked to Congressional intent. "Congress did not enact Section 211's 'contributing factor' test in a vacuum," but instead patterned it after similar whistleblower protection statutes in other industries. *Id.* at 196. Congressional intent in using the "contributing factor" test in other industries evidenced a desire to lessen the burden on plaintiffs in making their case, and in turn to make it more difficult for defendants to avoid liability. *Id.* Thus, after looking to case law involving whistleblower statutes similar to Section 211, the Commission held that the correct questions to ask in determining whether the protected activity was a "contributing factor" in the adverse action was: whether the "protected activity contributed 'in any degree' or played 'at least some role' in [the employer's] personnel decisions" as opposed to whether it was a "significant" or "motivating" factor. *Id.* at 196–97. The Commission, however, was quick to point out that this is not a "toothless" test:

> An employee may not simply engage in protected activities and expect immunity from future unfavorable personnel actions. Mere employer (or supervisor) knowledge of the protected activity does not suffice as a "contributing factor;" nor does "the equivalent of adding 'a drop of water into the ocean.' " The evidence, direct or indirect, must allow a reasonable person to infer that protected activities influenced the unfavorable personnel action to some degree. In cases where the evidence is weak, employers should be able to avoid liability by providing "clear and convincing evidence" that they would have taken the same personnel action anyway, based on non-discriminatory grounds.

Id. at 197. Therefore, finding a contributing factor does not necessarily end the analysis; "under section 211 (and under analogous whistleblower laws) employers still may avoid liability if they show, by 'clear and convincing evidence,' that they would have taken the same unfavorable personnel action even in the absence of whistleblowing." [3] *Id.* at 198.

NRC Evaluation

Within the context of the Commission's *TVA* decision, the NRC has reviewed the petition and has decided to deny PRM–50–92. As stated above, in deciding *TVA,* the Commission had before it the NRC staff's position as to the appropriate evidentiary standard under the Employee Protection Rule. The standard advocated by the staff in 2002 is fundamentally the same position now advocated by the petitioner. In 2004, when the Commission ruled in *TVA,* it explicitly elected an approach that is different from that proposed by the petitioner. In overturning the Licensing Board's decision, and the standard advocated by the staff in *TVA,* the Commission fully considered the option of using the clear and convincing question solely in the sanction determination process, and chose not to elect this approach. Further, the Commission also considered, and dismissed, the possibility of an inconsistent regulatory message in *TVA.*[4] Thus, the Commission's approach in *TVA* was adopted with full knowledge of the position and arguments currently advocated by the petitioner.

Contrary to the petitioner's understanding, *TVA* did not raise the NRC staff's burden of proving a violation to "somewhere between preponderance and clear and convincing." The staff's burden for proving retaliation is always preponderance of the evidence. Once the NRC staff meets its burden, the employer may proffer an affirmative defense by clear and convincing evidence, a higher standard for the employer to meet, that it would have taken the same personnel action anyway, regardless of the whistleblowing activity. The petitioner mistakenly treats the second part of the *TVA* test as a standard the NRC staff must refute to take enforcement action, rather than recognizing it as, in essence, an affirmative defense that the licensee may, but is not required to, address.

Further, *TVA* does not establish that "some amount of retaliation is in fact acceptable." Instead, *TVA* states that if the protected activity affected or contributed to the adverse action "in any way," "in any degree," or "played 'at least some role'," the staff will satisfy the Commission's "contributing factor" test. *TVA,* CLI–04–24, 60 NRC at 197. The staff does not have to show that the protected activity played a "significant," "motivating," "substantial," or "predominant" factor in the adverse action. *Id.* But, the staff must show more than mere employer knowledge of the protected activity or the equivalent of adding a "drop of water into the ocean." *Id.*

The Commission recognized in establishing the two-part test that although the NRC staff may demonstrate by a preponderance of evidence that the contributing factor test is met "where the evidence is weak," *id.* at 197, the Commission did not expect for the NRC staff to prevail in weak cases—only in those where the employer does not prove by a high standard of proof that it would have taken the same action absent protected activity. *See id.* at 192 ("In cases where the evidence is weak, employers should be able to avoid

[3] Ultimately, the Commission affirmed in part, and reversed in part, the Licensing Board's Order, and remanded the case to the Licensing Board for further action. On November 10, 2004, the Licensing Board approved a settlement agreement between Tennessee Valley Authority and the NRC and terminated the proceedings. *TVA,* LBP–04–26, 60 NRC 532 (2004).

[4] In fact, the staff argued this very same point to the Commission in the "NRC Staff Reply to Initial Briefs of the Tennessee Valley Authority and the Nuclear Energy Institute" (Nov. 3, 2003) (ADAMS Accession No. ML033240178), which the Commission directly rejected: "In practical terms, because we see few whistleblower enforcement adjudications at the NRC, because varying evidentiary frameworks are not necessarily outcome-determinative, and because the NRC's general enforcement policy is to give deference to DOL's whistleblower determinations, our disagreement with DOL on how to apply section 211 in adjudications is unlikely to lead to inconsistent results between the agencies very often, if at all." *TVA,* CLI–04–24, 60 NRC at 192.

liability by providing 'clear and convincing evidence' that they would have taken the same personnel action * * *"). By contrast, in cases where the staff has stronger evidence that protected activity was a contributing factor, such as when a document or employer's statements confirm an allegation of whistleblower discrimination, it would be unlikely that the employer could make its case by clear and convincing evidence that it would have taken the adverse action regardless. Thus, the Commission in *TVA* did not condone "some amount of retaliation"; rather, it established the standards for determining the existence of whistleblower discrimination if a violation is challenged by an employer.

In deciding *TVA,* the Commission looked to Section 211 for procedural guidance in applying Section 50.7 and generally adopted Section 211's overall framework. *Id.* at 194. The Commission, however, is not required to follow Section 211's evidentiary standard. *Id.* at 193–194.[5] Section 211 establishes DOL's authority to take action in cases involving whistleblower discrimination, *id.* at 194, but the NRC's authority to regulate against employee discrimination is derived from the Atomic Energy Act of 1954. Therefore, Section 211 should not be construed as directing the NRC's evidentiary approach.

Further, contrary to the petitioner's assertion, the discrimination data from 1999–2009 do not appear to evidence any meaningful trends because the data fluctuates up and down during the years prior to and following *TVA* (2004); in some years since *TVA,* the number of discrimination claims filed is higher than in the years directly preceding *TVA* and in others that number is lower. Also, because the data does not differentiate claims failing to meet the threshold *prima facie* determination from those that were withdrawn by the alleger or came to the NRC as third-party claims,[6] it is unknown whether there is any change in the percentage of discrimination allegations that were dismissed or withdrawn because they failed to meet the threshold for investigation, as the petitioner asserts.

	Calendar year										
	1999	2000	2001	2002	2003	2004[7]	2005	2006	2007	2008	2009
TOTAL DISCRIMINATION CLAIMS	139	144	108	97	96	97	118	88	84	94	116
Total Claims Resolved/[8]% of Total Claims	91/65.5	91/63.2	75/69.4	55/56.7	70/72.9	75/77.3	73/61.9	37/42.0	52/61.9	34/36.2	10/8.6
NRC Substantiated/% of Total Claims	6/4.3	6/4.2	8/7.4	0/0	4/4.2	3/3.1	1/0.9	2/2.3	0/0	1/1.1	0/0
NRC Not Substantiated/% of Total Claims	83/59.7	84/58.3	66/61.1	55/56.7	64/66.7	66/68.0	63/53.4	23/26.1	42/50.0	16/17.0	7/6.0
Settlements/[9]% of Total Claims	2/1.4	1/0.7	1/0.9	0/0	0/0	6/6.2	9/7.6	9/10.2	10/11.9	17/18.1	3/2.6
Claims Still Open/% of Total Claims	0/0	0/0	0/0	1/1.0	2/2.1	1/1.0	3/2.5	1/1.1	2/2.3	13/13.8	58/50.0
Claims Not Warranting NRC Review/[10]% of Total Claims	48/34.5	53/36.8	33/30.6	41/42.3	24/25.0	21/21.6	42/35.6	50/56.2	30/35.7	47/50.0	48/41.3

*The data contained in this table was obtained from the Allegation Management System.

Finally, the *TVA* decision has had no effect on the way the NRC staff approaches or evaluates whistleblower discrimination claims. That is, the NRC staff continues to issue notices of violations of the Employee Protection Rule to licensees, applicants, and contractors or subcontractors of licensees and applicants based on its assessment as to whether the evidence shows that protected activity was a contributing factor in the adverse action, while also taking into consideration credible evidence that the employer would have taken the same personnel action regardless of the protected activity.

Public Comments on the Petition

Due to this PRM's primary focus on the continued viability of a Commission adjudicatory decision, it was deemed a legal matter and thus, the NRC did not prepare a notice of receipt and request for comment, and instead began consideration of the request. Accordingly, there are no public comments on this petition.

Determination of Petition

For reasons cited above, the NRC is denying PRM–50–92.

Dated at Rockville, Maryland, this 28th day of February 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–5053 Filed 3–4–11; 8:45 am]

BILLING CODE 7590–01–P

[5] "It is true that our whistleblower regulation, section 50.7, does not adopt the Section 211 evidentiary paradigm as such, but neither does it adopt the *McDonnell Douglas or Price Waterhouse* paradigms. Our regulation is prohibitory, not procedural. It renders discriminatory conduct unlawful, but does not purport to prescribe evidentiary standards and approaches for use in NRC enforcement litigation."

[6] Third party claims are those discrimination claims that come to the NRC from an individual other than the employee who was allegedly discriminated against.

[7] 2004 represents both: (1) The year when the Commission decided *TVA* and (2) the year that the interim program regarding the voluntary use of Alternative Dispute Resolution (ADR) in addressing discrimination complaints and other allegations of wrongdoing was adopted in the NRC's Enforcement Policy.

[8] Refers to the number of discrimination claims for which either: (1) The NRC's Office of Investigations (OI) reached a conclusion and (2) those that did not involve an OI investigation and were settled via early-ADR (or licensee-sponsored internal mediation) or in the DOL.

[9] These numbers represent the number of cases settled either through early-ADR or in the DOL. However, the table does not reflect cases that involved DOL settlements between 1/1999 and 9/2004 that also involved an OI case. For information only, those numbers are: 1999—10; 2000—7; 2001—7; 2002—3; 2003—9; and 2004—3.

[10] These numbers represent the number of claims that did not meet the threshold *prima facie* determination, were withdrawn by the alleger, or came to the NRC as third-party claims. These numbers do not take into account that some of the open claims might eventually be found to not meet the *prima facie* determination or could be withdrawn by the alleger.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1325; Airspace Docket No. 10–ASO–40]

Proposed Amendment of Class E Airspace; Orangeburg, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Orangeburg, SC, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures (SIAPs) developed for Orangeburg Municipal Airport. This action shall

enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also shall make a minor adjustment to the geographic coordinates of the airport.

DATES: 0901 UTC. Comments must be received on or before April 21, 2011.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–1325; Airspace Docket No. 10–ASO–40, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2010–1325; Airspace Docket No. 10–ASO–40) 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*.

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–1325; Airspace Docket No. 10–ASO–40." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace at Orangeburg, SC to provide controlled airspace required to support the SIAPs for Orangeburg Municipal Airport. The existing Class E airspace extending upward from 700 feet above the surface would be modified for the safety and management of IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in subtitle VII, part, A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Orangeburg Municipal Airport, Orangeburg, SC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO GA E5 Orangeburg, SC [Amended]

Orangeburg Municipal Airport, SC
(Lat. 33°27′39″ N., long. 80°51′32″W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Orangeburg Municipal Airport.

Issued in College Park, Georgia, on February 18, 2011.

Mark D. Ward,

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

[FR Doc. 2011–5096 Filed 3–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–2010–0997; Notice No. 10–14]

RIN 2120–AJ38

Safety Management System for Certificated Airports; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Second extension of comment period and notice of procedures for submission of clarifying questions.

SUMMARY: The FAA published a proposed rule on October 7, 2010, to require each certificate holder to establish a safety management system (SMS) for its entire airfield environment (including movement and non-movement areas) to improve safety at airports hosting air carrier operations. The American Association of Airport Executives and Airports Council International—North America have requested that the FAA provide additional information supporting the proposed rule and extend the comment period to allow adequate time for the public to analyze and comment on that information and the NPRM. This action extends the comment period until July 5, 2011, and establishes a procedure for handling clarifying questions to the proposed rule.

DATES: The comment period for the NPRM published on October 7, 2010, closing on March 7, 2011 is extended until July 5, 2011. You must submit your clarifying questions in writing using the procedures outlined in this notice by April 6, 2011. The FAA anticipates responding to these submissions and providing a summary report of the pilot studies by May 21, 2011.

ADDRESSES: See the "Procedures for Filing Clarifying Questions" section of this document.

FOR FURTHER INFORMATION CONTACT: *Technical clarifications:* Keri Spencer, Office of Airports Safety and Standards, Federal Aviation Administration, e-mail *keri.spencer@faa.gov*

Legal clarifications: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, e-mail *rob.hawks@faa.gov.*

Cost/benefit clarifications: Nicole Nance, Office of Aviation Policy and Plans, Federal Aviation Administration, e-mail *nicole.nance@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2010, the FAA published Notice No. 10–14, entitled "Safety Management System for Certificated Airports" (75 FR 62008). Comments to that document were to be received on or before January 5, 2011. On December 10, 2010, in response to several requests for extension of the comment period, the FAA granted an additional 60 days for commenters to analyze the NPRM and provide meaningful comment (75 FR 76928).

By comments posted to the docket on February 17, 2011, Airport Council International—North America (ACI–NA) and the American Association of Airport Executives (AAAE) requested the FAA extend the comment period for a second time. ACI–NA and AAAE also requested the FAA provide additional information to allow for meaningful comment on the proposed rule. Specifically, ACI–NA made the following requests:

(1) Additional information is needed regarding the FAA's proposed SMS implementation strategy, most notably what will be expected in the required SMS Implementation Plans.

(2) Data, findings, and conclusion—both positive and negative—from the three SMS pilot studies need to be made available in the docket so these findings and conclusions can inform the industry's review of the costs, benefits, and potential issues arising from the implementation of the proposed rule.

(3) The proposed rule needs to be reviewed in conjunction with key guidance documents, especially the revised version of FAA Advisory Circular 150/5200–37. These documents, which are mentioned explicitly in the FAA's discussion of the proposed rule will describe the standard means of compliance with the proposed rule and are needed to understand the scope and scale of airport SMS requirements.

(4) Additional time will be needed for technical analysis by commenters, including analyses of the costs and benefits of phased SMS implementation, an implementation approach on which the FAA has specifically requested comments.

AAAE made the following requests:

(1) We request that the FAA make results and recommendations from all three phases of the pilot studies available before closing the comment period.

(2) The FAA is under a statutory deadline to implement the part 121 SMS rule and has proposed a short time schedule for issuing its part 139 training requirements. We request that the comment period remain open until the other regulatory documents have been issued in their final form.

(3) The agency also has committed to issuing an advisory circular on implementation of SMS requirements. We request that the agency leave the comment period open on the proposed SMS rule until at least a draft of the advisory circular is issued. That way, respondents can comment on both documents simultaneously.

AAAE suggests the comment period remain open until at least September 30, 2011.

FAA Response to the Requests

The FAA has carefully considered the requests for extension of the comment period. The FAA believes that the narrative and analysis in the NPRM and Initial Regulatory Evaluation, which was made available in the docket concurrently with NPRM publication, contain sufficient detail and supporting data to permit meaningful comment by the public. The FAA also notes that it has received thoughtful comments from several airports, indicating that sufficient information currently exists in the docket to permit meaningful comment. However, the FAA acknowledges there is a belief among some members of the public that additional information may result in better comments. From the request submitted, it appears the bulk of this concern involves the FAA's implementation strategy for SMS and the results of the pilot study.

To address this concern about insufficient information, the FAA has determined to pursue a combination of strategies. First, the FAA will accept and respond to specific clarifying questions submitted by the public. This strategy will allow the public to identify specific areas of the NPRM or Initial Regulatory Evaluation that are unclear or for which more information may be desired. The intent is that the public would be able to obtain specific information from the FAA, provided that information exists. The specific procedure is discussed in the

"Procedures for Filing Clarifying Questions" section of this notice and permits a 30-day period for the public to submit questions, a 45-day period for the FAA to respond to the questions, and a 45-day period for the public to review the information and submit comments to the proposed rule. Secondly, the FAA will prepare a summary report that will provide additional information on the implementation plan required under the proposal, a summary of findings and conclusions from the first two pilot studies, and a summary of findings and conclusions from the safety management systems proof of concept. The FAA anticipates making this report available in the docket by May 21, 2011. Additionally, the FAA is seeking permission from pilot study participants to place documents developed during those studies in the docket. Because those documents are the property of the pilot study participants and may contain confidential or proprietary information, the FAA will make available documents to the extent permitted and as soon as possible. The FAA believes these strategies respond to ACI's request (1), (2), and (4) and AAAE's request (1).

In the NPRM, the FAA stated that it would develop and make available an AC on SMS prior to issuance of the final rule. The FAA currently is developing that document. The FAA also is conducting a third pilot study on the implementation of SMS, which began after the NPRM was published. The purpose of the pilot study and AC is to facilitate implementation of the proposed rule and to provide additional examples of how an airport could develop and implement its SMS. The AC likely will provide multiple means to comply with the regulation, some of which are outlined in the NPRM preamble, but the AC is not a substitute for the regulation nor does it provide the only means of compliance. Additionally, the FAA does not anticipate the AC will expand the "scope and scale" of SMS from what is discussed in the NPRM and Initial Regulatory Evaluation. The FAA also does not anticipate the third pilot study or AC would result in significant changes to the proposed rule. Of course, the FAA may change the rule after careful consideration of comments to the proposal.

The FAA does not believe a draft AC is essential to understanding the proposed rule, especially in light of the opportunities for additional information discussed earlier. Consequently, the FAA has determined that holding the comment period open until publication of a draft AC does not add value to the rulemaking process. Nevertheless, the FAA intends, as it routinely does, to publish a draft AC in advance of publication of any final rule. There will be opportunity for the public to comment on that draft AC, for the FAA to carefully consider those comments, and for the FAA to respond to those comments either before or simultaneously with publication of a final rule. The FAA believes this answers ACI's request (3) and AAAE's request (3).

The FAA acknowledges there are a variety of rulemaking initiatives currently in process, among them an NPRM for SMS for part 121 operators and an NPRM for part 139 safety enhancements. Although these rulemakings have some relationship to the airport SMS NPRM, they are separate rulemakings involving different issues and separate schedules. The FAA finds no merit, other than to delay FAA rulemaking efforts, to holding open the comment period on this rulemaking initiative until final rules are issued with respect to the other initiatives. The FAA believes this answers AAAE's request (2).

Extension of Comment Period

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by ACI–NA and AAAE for a second extension of the comment period to Notice No. 10–14.

The FAA finds no merit to extending the comment period seven or more months, as requested by ACI–NA and AAAE. However, to accomplish the strategies for providing additional information to the public, the FAA has determined that an extension of 120 days is appropriate and sufficient. The FAA has determined the extension is consistent with the public interest, and that good cause exists for this action. Absent exceptional circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Accordingly, the comment period for Notice No. 10–14 is extended until July 5, 2011.

Procedures for Filing Clarifying Questions

The following procedures are not a substitute for filing substantive questions and comments to the NPRM. The procedures for submitting those types of comments are discussed in the NPRM and repeated in the "Additional Information" section of this notice. Commenters should follow those procedures to file substantive comments by July 5, 2011.

To submit a request to the FAA for clarification of the NPRM (Docket Number FAA–2010–0997), you must send your request using the following method by April 6, 2011. The FAA requests any clarifying questions address specific issues raised by the NPRM or Initial Regulatory Evaluation to permit meaningful FAA response.

1. Post your request on the Federal eRulemaking Portal. To access this electronic docket, go to *http://www.regulations.gov,* enter the Docket Number FAA–2010–0997, and follow the directions for sending your request electronically.

2. In addition to sending your request to the electronic docket, send a copy of the request via e-mail to the appropriate subject matter expert:

- *Technical clarifications:* Keri Spencer, Office of Airports Safety and Standards, Federal Aviation Administration, e-mail *keri.spencer@faa.gov.*
- *Legal clarifications:* Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, e-mail *rob.hawks@faa.gov.*
- *Cost/benefit clarifications:* Nicole Nance, Office of Aviation Policy and Plans, Federal Aviation Administration, e-mail *nicole.nance@faa.gov.*

The FAA will respond to all clarifying questions submitted by April 6, 2011. The responses will be provided directly to you and posted in the rulemaking docket. The FAA expects to provide responses by May 21, 2011.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposed rule. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

You may send comments identified by docket number FAA–2010–0997 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Do not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued in Washington, DC, on March 3, 2011.

Michael J. O'Donnell,

Director, Office of Airport Safety and Standards.

[FR Doc. 2011–5187 Filed 3–4–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[EPA–R05–OAR–2010–0034; FRL–9276–1]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Missouri; Saint Louis Nonattainment Area; Determination of Attainment of the Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Saint Louis $PM_{2.5}$ nonattainment area in Illinois and Missouri has attained the 1997 annual fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). This proposed determination of attainment is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data, from the 2007–2009 monitoring period, which show that the Saint Louis area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. EPA also evaluated incomplete data from this period from other monitors in the area, as well as preliminary data available to date for 2010. EPA believes these data support the determination that the area has attained the 1997 annual $PM_{2.5}$ NAAQS. If this proposed determination is made final, the requirements for this area to submit an attainment demonstration, associated reasonably available control measures (RACM) to include reasonably available control technology (RACT), a reasonable further progress plan, contingency measures, and other planning State Implementation Plans (SIPs) revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS shall be suspended for so long as the area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

EPA's determination that this area has attained the 1997 annual $PM_{2.5}$ NAAQS is not equivalent to redesignating the area to attainment. This action does not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA) because the States of Missouri and Illinois have not yet submitted, and EPA has not yet approved, a maintenance plan for the area as required under that section and section 175A of the Act, nor has EPA promulgated a determination that the area has met other requirements for redesignation. The designation status of the area will remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that this area meets the CAA requirements for redesignation to attainment.

DATES: Comments must be received on or before April 6, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0034, by one of the following methods:

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

2. *E-mail: aburano.douglas@epa.gov.*

3. *Fax:* (312) 408–2279.

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

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

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0034. 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 *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.* You may also contact Tracey Casburn, Air Planning and Development Branch, Environmental Protection Agency, Region 7, 901 North Fifth Street, Kansas City, Kansas 66101, (913) 551–7016, *casburn.tracey@epa.gov.*

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

I. What action is EPA proposing?
II. What is the background of this action?
III. What is EPA's analysis of the relevant air quality data?
IV. What are the effects of this action?
V. Statutory and Executive Order Reviews

I. What action is EPA proposing?

The EPA is proposing to determine that the Saint Louis $PM_{2.5}$ nonattainment area in the States of Missouri and Illinois has attained the 1997 annual $PM_{2.5}$ NAAQS. The proposed determination is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data from the 2007–2009 monitoring period which show that the Saint Louis area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. Additional data from area monitors with incomplete data for this period (due for example to monitor closure) and also uncertified data available to date for 2010 support this determination.

II. What is the background for this action?

On July 18, 1997 (62 FR 36852), EPA established a health-based $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour standard of 65 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations.

EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA, 42 U.S.C. 7406(d)(1). EPA and State air quality agencies generally initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS in 1999, and implemented a full network of air quality monitors by January 2001.

On January 5, 2005, in the **Federal Register** (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. EPA designated 39 areas as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS including the bi-state Saint Louis area (*see* 40 CFR part 81). These designations became effective on April 5, 2005. The Missouri portion of the Saint Louis $PM_{2.5}$ nonattainment area includes the counties of Franklin, Jefferson, Saint Charles, Saint Louis, and the City of Saint Louis. The Illinois portion of the Saint Louis $PM_{2.5}$ nonattainment area includes the counties of Madison, Monroe, Randolph (Baldwin Township only) and Saint Clair. *See* 40 CFR 81.314 (Illinois) and 40 CFR 81.326 (Missouri).

In 2006, after thorough review of the 1997 PM standards, EPA retained the 1997 $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (the 2006 24-hour standard). On November 13, 2009, EPA designated the Saint Louis area as attaining the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Saint Louis area remained designated nonattainment for the 1997 annual $PM_{2.5}$ standard, but was attainment for the 1997 24-hour standard. Thus today's action does not address attainment of either the 1997 or the 2006 24-hour standards.

In response to legal challenges of the annual standard promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). EPA notes, however, that since the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

On April 25, 2007 (72 FR 20664), the EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which the EPA provided guidance for state and tribal plans to implement the 1997 annual $PM_{2.5}$ NAAQS. This rule, at 40 CFR 51.1004(c), establishes certain regulatory consequences of a determination of attainment of the standard.

III. What is EPA's analysis of the relevant air quality data?

Today's rulemaking assesses whether the Saint Louis area is attaining the 1997 annual $PM_{2.5}$ standard. Under EPA's regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as

determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the area.

The EPA has reviewed the ambient air quality monitoring data in the Saint Louis area for $PM_{2.5}$, consistent with the requirements contained at 40 CFR part 50. EPA's review focused on data recorded in the EPA Air Quality System (AQS) database for the Saint Louis $PM_{2.5}$ nonattainment area from 2007 to 2009, and supplementally considered data recorded before and after that period.

Table 1 shows the 2007 to 2009 design values (*i.e.,* the 3-year average of annual mean $PM_{2.5}$ concentrations) for the 1997 annual $PM_{2.5}$ NAAQs for the Saint Louis $PM_{2.5}$ nonattainment area monitors with complete data for that period. All data values are expressed in micrograms per meter cubed.

TABLE 1—ANNUAL $PM_{2.5}$ DESIGN VALUES FOR SAINT LOUIS AREA MONITORS WITH COMPLETE DATA FOR 2007 TO 2009

State	County	Monitor	Monitoring site name	Annual design value 2007–2009
IL	Madison	17–119–1007	23rd and Madison	14.1
		17–119–2009	1700 Annex St	12.5
		17–119–3007	54 N. Walcott	12.5
	Randolph	17–157–0001		11.4
	Saint Clair	17–163–0010	13th and Tudor	13.3
		17–163–4001	1500 Caseyville Ave	12.5
MO	City of Saint Louis	29–510–0007	Broadway	12.8
		29–510–0085	Blair Street	12.7

As Table 1 shows, there were eight monitoring sites with complete data for 2007 to 2009. Data are considered to be sufficient for comparison to the NAAQS if three consecutive complete years of data exist. A complete year of air quality data comprises four calendar quarters, with each quarter containing data from at least 75% of the scheduled sampling days. These eight monitoring sites with complete data provide an adequate basis for EPA to determine whether the area has attained the NAAQS. See 40 CFR part 58, Appendix D for network design criteria.

The EPA concludes that the Saint Louis area has attained the 1997 annual $PM_{2.5}$ NAAQS based on its evaluation of complete quality assured data from the relevant monitoring sites for the 2007–2009 monitoring period.

Incomplete data from additional monitoring sites in the area also support EPA's determination that area attains the 1997 annual $PM_{2.5}$ NAAQS. A number of additional monitors have recorded data that are not considered as complete for the three-year 2007–2009 monitoring period. Pertinent data from these sites are shown in Table 2. As shown in this table, although several of these sites shut down recently, the most recent three years of complete data at all of these sites showed the area to be attaining the standard, a conclusion that is supported by the data that are available, though not complete for 2007 to 2009. Table 2 includes sites that started operation only recently; these sites did not have a complete set of data for 2007–2009, but the available data from that period add support to the conclusion that the area is attaining the standard.

TABLE 2—$PM_{2.5}$ DESIGN VALUES FOR SAINT LOUIS AREA SITES WITH INCOMPLETE DATA IN 2007 TO 2009

State	County	Monitor	Average value 2007–2009	Years of operation	Most recent complete design value	
					Value	Years
IL	Madison	17–119–0024	13.6	7/07–present	None	
MO	Jefferson	29–099–0012	12.9	1/99–2/08	13.9	2005–2007
		29–099–0019	11.1	3/08–present	None	
MO	Saint Charles	29–183–1002	12.7	1/99–2/08	13.3	2005–2007
MO	Saint Louis	29–189–0015	12.6	9/08–3/09	12.2	2006–2008
		29–189–2003	12.1	1/98–6/09	12.3	2006–2008
		29–189–3001	11.1	7/09–present	None	
	Saint Louis City	29–510–0086	13.1	1/99–6/07	13.3	2004–2006
		29–510–0087	12.8	11/99–4/09	13.6	2006–2008

Data handling conventions and computations necessary for determining whether areas have met the $PM_{2.5}$ NAAQS, including requirements for data completeness, are listed in Appendix N of 40 CFR part 50. The use of less than complete data is subject to the approval of the EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence and nearby concentrations in determining whether to use such data as set forth at 40 CFR part 50, Appendix N section 4.1(c). The monitors listed in Table 2 do not have complete data for the 2007–2009 monitoring period. However, the historical certified data recorded at the monitors that were discontinued during this period and recent certified data recorded at monitors that started operation during the period provide additional support for EPA's proposed determination that the Saint Louis area has attained the 1997 annual $PM_{2.5}$ NAAQS. EPA is also approving the use of these data for consideration in this determination because it finds that Missouri and Illinois have exercised diligence in monitoring in the Saint Louis area, and have worked cooperatively with EPA in evaluating and seeking approval for monitor closures and moves. A discussion of each of the monitors with incomplete data for the 2007–2009 period is available in a technical support document, which is part of the docket of this proposed rulemaking.

The EPA also has considered additional monitoring data for 2010 that have been submitted by the states and are in EPA's AQS. Data for the entire 2010 calendar year are not yet certified, so EPA cannot consider these data yet as it evaluates the annual average concentrations. Nevertheless, EPA examined 2010 data available to date as an indication of whether the area continues to attain the standard. EPA believes that these data support the determination that the Saint Louis area continues to attain the $PM_{2.5}$ annual NAAQS.

The EPA's review of these data (monitoring data from the 2007–2009 monitoring period and preliminary 2010 data available to date) supports EPA's determination that the Saint Louis $PM_{2.5}$ nonattainment area has met and continues to meet the 1997 annual $PM_{2.5}$ NAAQS. EPA is soliciting comment on the issues discussed in this document. These comments will be considered before EPA takes final action.

IV. What are the effects of this action?

If this proposed determination is made final, under the provisions of the $PM_{2.5}$ Implementation Rule (40 CFR 51.1004(c)) the requirements for the Saint Louis $PM_{2.5}$ nonattainment area to submit attainment demonstration, RACM (including RACT), a reasonable further progress plan, contingency measures, and other planning SIPs revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS shall be suspended for so long as the area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

As discussed further, the proposed determination of attainment for the Saint Louis $PM_{2.5}$ nonattainment area would, if finalized: (1) Suspend the States' obligation for Missouri and Illinois to submit the requirements listed above; (2) continue such suspension until such time, if any, that EPA subsequently determines that any monitor in the area has violated the 1997 annual $PM_{2.5}$ NAAQS; and (3) be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Saint Louis $PM_{2.5}$ nonattainment areas based on the 2006 $PM_{2.5}$ NAAQS or future $PM_{2.5}$ NAAQ revision.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR section 51.1004(c), would no longer exist, and the States of Missouri and Illinois would thereafter have to address the pertinent requirements.

This proposed approval is limited to a determination that the air quality data show that the Saint Louis $PM_{2.5}$ nonattainment area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS; it is not equivalent to the redesignation of the Saint Louis $PM_{2.5}$ nonattainment area to attainment of the 1997 annual $PM_{2.5}$ NAAQS. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA) because the EPA would not have yet approved a maintenance plan for the area as required under CAA section 175A, nor a determination that the Saint Louis $PM_{2.5}$ nonattainment area has met the other requirements for redesignation under the CAA. The designation status of the Missouri and Illinois portions of the Saint Louis $PM_{2.5}$ nonattainment area will remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as the EPA takes final rulemaking action to determine that such portions meet the CAA requirements for redesignation to attainment.

V. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Dated: February 9, 2011.

Susan Hedman,

Regional Administrator, Region 5.

Dated: February 22, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–5048 Filed 3–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0846; FRL–9275–9]

Extension of Public Comment Period for Proposed Action on Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determination for New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On January 5, 2011, EPA published in the **Federal Register** a proposed rule on interstate transport of pollution affecting visibility and Best Available Retrofit Technology (BART) determination for New Mexico and requested comment by March 7, 2011. EPA is extending the public comment period for the proposed rule until April 4, 2011.

DATES: Comments must be submitted no later than April 4, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2010–0846, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- Follow the online instructions for submitting comments.
- EPA Region 6 "Contact Us" *Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD (Multimedia)" and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2010–0846. 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 FURTHER INFORMATION CONTACT: Joe Kordzi Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7186, fax number (214) 665–7263; e-mail address *kordzi.joe@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA. On January 5, 2011, we published in the **Federal Register** a proposed rule on interstate transport of pollution affecting visibility and BART determination for New Mexico (76 FR 492). In the proposal we requested comment by March 7, 2011. On January 11, 2011, we published a notice in the **Federal Register** announcing a public hearing on our proposal to be held in Farmington, New Mexico on February 17, 2011, at San Juan College, beginning at 6 p.m. (76 FR 1578). The proposal, notice of public hearing, and supporting documentation for our proposal can be accessed from the regulations.gov Web site (Docket No. EPA–R06–OAR–2010–0846).

We are extending the comment period for our proposed rule until April 4, 2011. This extension will provide an opportunity for submission of rebuttal and supplementary information 30 days after the public hearing.

Dated: February 28, 2011.

William L. Luthans,

Acting Multimedia Planning and Permitting Division Director, Region 6.

[FR Doc. 2011–5045 Filed 3–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0813; FRL–9239–7]

Revisions to the California State Implementation Plan, Imperial County, Kern County, and Ventura County; Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD), Kern County Air Pollution Control District (KCAPCD), and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). We are proposing to approve revisions to local rules that define terms used in other air pollution regulations in these areas under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by April 6, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0813, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the

hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: ICAPCD Rule 101, KCAPCD Rule 102, and VCAPCD Rule 2. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 23, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–4917 Filed 3–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R06–RCRA–2010–0587; FRL–9274–3]

Texas: Final Authorization of State-initiated Changes and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: During a review of Texas' regulations, the EPA identified a variety of State-initiated changes to Texas' hazardous waste program under the Resource Conservation and Recovery Act, as amended (RCRA), for which the State had not previously sought authorization. The EPA proposes to authorize the State for the program changes. In addition, the EPA proposes to codify in the regulations entitled "Approved State Hazardous Waste Management Programs", Texas' authorized hazardous waste program. The EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that the EPA will enforce under RCRA.

DATES: Send written comments by April 6, 2011.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division at the address shown below. You can examine copies of the materials that form the basis for this authorization and incorporation by reference during normal business hours at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533 or (214) 665–8178. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533 and Julia Banks (214) 665–8178.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, the EPA is authorizing the changes to the Texas program, and codifying and incorporating by reference the State's hazardous waste program as a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this authorization and incorporation by reference in the preamble to the direct final rule. Unless we get written comments which oppose this authorization and incorporation by reference during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: January 24, 2011.

Al Armendariz,

Regional Administrator, EPA Region 6.

[FR Doc. 2011–4912 Filed 3–4–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5

Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Negotiated Rulemaking Committee meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas.

DATES: Meetings will be held on April 13, 2011, 9:30 a.m. to 6 p.m.; April 14, 2011, 9 a.m. to 6 p.m.; and April 15, 2011, 9 a.m. to 4 p.m.

ADDRESSES: Meetings will be held at the Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, Maryland 20852, (301) 881–2300.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Nicole Patterson, Office of Shortage Designation, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–9027, E-mail: *npatterson@hrsa.gov* or visit *http://www.hrsa.gov/advisorycommittees/shortage/.*

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to the public.

Purpose: The purpose of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas (Committee) is to establish criteria and a comprehensive methodology for Designation of Medically Underserved Populations and Primary Care Health Professional Shortage Areas, using a Negotiated Rulemaking (NR) process. It is hoped that use of the NR process will yield consensus among technical experts and

stakeholders on a new rule for designation of medically underserved and primary care health professions shortage areas, which would be published as an Interim Final Rule in accordance with Section 5602 of the Affordable Care Act, Public Law 111–148.

Agenda: The meeting will be held on Wednesday, April 13; Thursday, April 14; and Friday, April 15. It will include a discussion of various components of a possible methodology for identifying areas of shortage and underservice, based on the recommendations of the Committee in the previous meeting. The Friday meeting will also include development of the agenda for the next meeting. Members of the public will have the opportunity to provide comments during the meeting on Friday afternoon, April 15.

Requests from the public to make oral comments or to provide written comments to the Committee should be sent to Nicole Patterson at the contact address above at least 10 days prior to the first day of the meeting, Wednesday, April 13. The meetings will be open to the public as indicated above, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed above at least 10 days prior to the meeting.

Dated: February 23, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–5041 Filed 3–4–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1174]

Proposed Flood Elevation Determinations

Correction

In proposed rule document 2011–2281 beginning on page 5769 in the issue of Wednesday, February 2, 2011 make the following correction:

§ 67.4 [Corrected]

On page 5772, in § 67.4, preceding the last table, add the heading "Doniphan County, Kansas, and Incorporated Areas".

[FR Doc. C1–2011–2281 Filed 2–4–11; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, and 43

[WCB: WC Docket Nos. 07–38, 09–190, 10–132, 11–10; FCC 11–14]

Modernizing the FCC Form 477 Data Program; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of February 28, 2011, a document concerning modernization of the FCC Form 477. Inadvertently the Comment Filing Procedures section of the February 28, 2011 publication mistakenly references WC Docket No. 10–191. This document removes that incorrect reference and replaces it with the correct docket number in this proceeding, WC Docket No. 11–10.

DATES: Effective on March 7, 2011.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, 202–418–1507.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document (FR Doc. 2011–4393) in the **Federal Register** of February 28, 2011 (76 FR 10827) relating to the modernization of the FCC Form 477. The document (FR Doc. 2011–4393), published in the **Federal Register** of February 28, 2011 (76 FR 10827), mistakenly references WC Docket No. 10–191. This correction removes the reference to WC Docket No. 10–191 published on February 28, 2011, and replaces it with the correct WC Docket No. 11–10.

In FR Doc. 2011–4393, published on February 28, 2011 (76 FR 10827), make the following correction: on page 10842, in the third column, paragraph 118, replace reference to WC Docket No.10–191 with the correct docket number in this proceeding, WC Docket No. 11–10.

Dated: February 28, 2011.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

[FR Doc. 2011–5095 Filed 3–4–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 101004485–0486–01]

RIN 0648–XZ50

Listing Endangered and Threatened Species: 90-Day Finding on a Petition to List Six Species of Sawfishes as Endangered or Threatened Species Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding, request for information, and initiation of status review.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list six species of sawfish: *Anoxyprisitis cuspidata, Prisitis clavata, P. microdon, P. pristis, P. zijsron,* and the remaining non-listed population(s) of *P. pectinata* as endangered or threatened under the Endangered Species Act (ESA). We find that the petition and information in our files present substantial information indicating the petitioned action may be warranted for five of the sawfish species petitioned (*A. cuspidata, P. clavata, P. microdon, P. zijsron,* and all non-listed population(s) of *P. pectinata*). We find that the petition and information in our files do not present substantial information indicating that the petitioned action may be warranted for *P. pristis.* We will conduct a status review of the five species of sawfish (*A. cuspidata, P. clavata, P. microdon, P. zijsron,* and all non-listed population(s) of *P. pectinata*) to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data regarding these species (see below).

DATES: Information and comments on the subject action must be received by May 6, 2011.

ADDRESSES: You may submit comments, identified by the code 0648–XZ50, addressed to: Shelley Norton, Natural Resource Specialist, by any of the following methods:

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Facsimile (fax):* 727–824–5309.
- *Mail:* NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

• *Hand delivery:* You may hand deliver written comments to our office during normal business hours at the street address given above.

Instructions: All comments received are a part of the public record and may be posted to *http://www.regulations.gov* without change. All personally identifiable 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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Corel WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shelley Norton, NMFS, Southeast Region, (727) 824–5312; or Dwayne Meadows, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 2010, we NMFS, received a petition from WildEarth Guardians requesting that the Secretary of Commerce (Secretary) list six species of sawfish (range-wide): *A. cuspidata, P. clavata, P. microdon, P.* p*ristis, P. zijsron,* and the remaining non-listed population of *P. pectinata* as endangered or threatened species under the ESA. The petitioner alternatively requested the listing of any Distinct Population Segment (DPS) of the six species of sawfish, if we determine that they exist. Copies of the petition are available from us (*see* **ADDRESSES**, above).

On November 30, 1999, we received a petition from the Center for Marine Conservation (now the Ocean Conservancy) requesting that we list the North American population of smalltooth sawfish (*P. pectinata*) as endangered. We listed the U.S. DPS of smalltooth sawfish as endangered on April 1, 2003 (68 FR 15674). Smalltooth sawfish whose range is located outside the U.S. are not currently listed under the ESA.

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a "positive 90-day finding"), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a "species," which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA–U.S. Fish and Wildlife Service (USFWS) (jointly, "the Services") policy clarifies the agencies' interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Court decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action "may be" warranted. As a general matter, these decisions hold that a petition need not establish a "strong likelihood" or a "high probability" that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioner's assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests

an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by other organizations or agencies, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do "not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act" because NatureServe assessments "have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide." (*http://www.natureserve.org/prodServices/statusAssessment.jsp*). Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Species Description

In the following sections we compile information from the petition and our files to describe the best available information and knowledge regarding the petitioned species biology.

Taxonomy

All sawfishes belong to one of two genera (*Pristis* or *Anoxypristis*) in the Family Pristidae of the Order Pristiformes, and are classified as rays (Superorder Batoidea). Considerable taxonomic confusion exists for sawfishes. The largetooth sawfish group (*P. pristis, P. microdon,* and *P. perotteti*) is considered to be the most taxonomically confused of all of the sawfish species. Faria (2007) distinguished seven extant species in the family. The petitioner states that *P. pristis* is a valid taxon based on the most recent IUCN assessment (IUCN, 2005), but that it is a sketchily-known large sawfish. The petitioner also states that mature specimens are lacking and small specimens are rare and isolated attributes may be misidentified members of *P. microdon.* Information in our files indicates that *P. pristis* is not a valid species eligible for listing under the ESA. Faria (2007) completed a taxonomic review of sawfishes using historical taxonomic literature, empirical observations on morphology, geographical distribution, and genetics. Using molecular phylogeny (mitochondrial and nuclear gene analysis) paired with morphological characteristics he concluded that *P. pristis* is not a valid species. *Pristis pristis* is associated with various morphological features from a variety of specimens that cannot be assigned to a single species (Faria 2007). Based on the results of his review, Faria (2007) has prepared a proposal to the International Commission of Zoological Nomenclature to suppress or declare invalid *P. pristis.* The taxonomy sources cited by the petition, the IUCN and the Integrated Taxonomic Information System, rely on older, out-of-date information. Our regulations state that, "In determining whether a particular taxon or population is a species for the purposes of the Act, the Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group" (50 CFR 424.11(a)). Under this provision, we must apply the best available science even when it indicates that currently accepted taxonomic classifications are wrong. Based on the best available commercial and scientific information, we have determined that *P. pristis* is not a valid species and, therefore, does not qualify for listing under the ESA. The remainder of this document will focus on the five remaining sawfish species listed in the petition.

Distribution

Sawfishes are elasmobranches that historically were once widespread in tropical to warm temperate, shallow, nearshore marine habitats, estuaries, large rivers, and some lakes. Their distribution was presumably once continuous in suitable habitat, but is now severely fragmented with many populations extirpated from large parts of their former range and remaining populations seriously depleted.

Sawfish distributions are still widespread. *Anoxypristis cuspidata* occurs in the Indo-West Pacific Ocean ranging from east Africa to Australia, China, and Taiwan (Compagno and Cook, 1995). *Pristis clavata* primarily occurs in northern nearshore waters of Australia while *P. microdon* is found from Sri Lanka to Australia, including islands of the Indonesian archipelago (Last and Stevens, 1994; Compagno and Cook, 1995). *Pristis microdon* is also found in freshwater bodies in countries in Southern Africa, India, and southeastern Asia (Taniuchi *et al.,* 1994). *Pristis pectinata* is the most wide-ranging species, but its distribution is highly disjunct. *Pristis pectinata* occurs in the Western Atlantic Ocean from the Gulf of Mexico to Brazil (Bigelow and Schroeder, 1953), while in the eastern Atlantic Ocean, *P. pectinata* once occurred in the Mediterranean Sea (where it is now extirpated) and is rarely found in western African countries and South Africa. Its range further extends through the Indian Ocean from east Africa to Southeast Asia and Australia (Last and Stevens, 1994; Simpfendorfer, 2005). *Pristis zijsron* occurs in the Indian and Western

Pacific Ocean from east Africa to Australia including some areas of Southeast Asia and in the Indonesian archipelago (Bigelow and Schroeder, 1953; Last and Stevens, 1994; Cook and Compagno, 1995).

Habitats

Sawfishes are generally benthic in nature frequenting shallow coastal, brackish, and freshwater habitats. Sawfishes usually occur in shallow water depths less than 32 ft (10 m), but occasionally adults have been recorded up to 164 ft (50 m) (Simpfendorfer and Wiley, 2005). Observations of sawfishes tend to indicate a preference for areas with lower salinities especially river mouths. For the U.S. DPS of smalltooth sawfish, Simpfendorfer and Wiley (2005) reported closer associations between encounters and mangroves, seagrasses, and the shoreline than expected if distribution were random. Their encounter data also demonstrated that juvenile smalltooth sawfish occur in shallower water, and larger sawfish occur regularly at depths greater than 32 ft (10 m).

Age, Growth, and Reproduction

Studies on the biological characteristics of any of the sawfishes are rare, but those studies that have examined parameters such as age, growth, and reproduction suggest a group with very low productivity. In the following discussion, we describe what is known about the life history of any of the species for which information exists. Where necessary we make determinations as to the best-available evidence for the biology of the petitioned species. There have been no formal studies examining the age and growth of the largetooth sawfishes, though Thorson's (1982a) study of the Lake Nicaragua population of *P. perotteti* provided some parameters that may be applicable to other sawfishes. He estimated size at birth to be 30 in (75 cm) and an early juvenile growth rate of 13.8 to 15.7 in (35 to 40 cm)/year. Thorson (1982a) also estimated age of maturity to be 10 years and size at maturity to be 118 in (300 cm). Preliminary vertebral growth ring analysis suggests the lifespan of *P. microdon* to be an estimated maximum age of 51 years (Peverell, 2006), and we determined this to be our best available estimate of largetooth sawfish lifespan. Age at maturity for *P. pectinata* has been estimated to be 10–33 years depending on sex and study (Simpfendorfer, 2000; Clarke *et al.,* 2004). Tanaka (1991) produced a growth curve for the freshwater sawfish *P. microdon* from northern Australia and Papua New Guinea using vertebral ageing that indicated relatively slow growth and late maturity. In contrast, Thorburn *et al.* (2007), working in northwestern Australia, reported similar first year growth rates, but continued rapid growth, with growth to 98 in (2500 mm) approximately four times faster than reported by Tanaka (1991). Thorson (1982) provided growth information for the largetooth sawfish (*P. perotetti*) from tag-recapture data, noting slow growth in adults (mean annual growth of 1.7 in or 44 mm). Recently, Simpfendorfer *et al.* (2006) reported growth rates of juvenile smalltooth sawfish collected in Florida waters between 1999 and 2006 were 25.59 to 33.46 in (650–850 mm) in the first year and 18.90 to 26.77in (480–680 mm) in the second year. The growth rates reported are substantially faster than those previously assumed for this species and may have important implications for the recovery of this endangered species. However, there are conflicting data regarding the growth rates of older sawfish which need to be resolved.

As in all elasmobranches, fertilization in sawfishes is internal. Development is believed to be ovoviviparous. The embryos of *P. pectinata,* while still bearing the large yolk sac, already resemble adults relative to the position of their fins and absence of the lower caudal fin lobe. During embryonic development the rostral saw blade is soft and flexible. The rostral teeth are also encapsulated or enclosed in a sheath until birth. Shortly after birth, the teeth become exposed and attain their full size proportionate to the size of the saw. Size at birth for smalltooth sawfish is approximately 2.3 to 2.7 ft (690–810 mm) (Simpfendorfer *et al.* 2008). Bigelow and Schroeder (1953) reported gravid females carry 15–20 embryos. Studies of *P. perotteti* in Lake Nicaragua (Thorson, 1976) report brood sizes of 1–13 individuals, with a mean of 7.3 individuals. The gestation period for *P. perotteti* is approximately 5 months and females likely produce litters every second year (Thorson, 1976).

Simpfendorfer (2000), using age based demographic models, estimated an intrinsic rate of increase of 0.08 to 0.13 per year, and population doubling time of 5.4 and 8.5 for *P. pectinata* (US DPS). Intrinsic rates of increase for *P. perotteti* were 0.05 to 0.07 per year, with a population doubling time of 10.3 to 13.5 years. The estimates were based on ideal conditions (no fisheries mortality, no population fragmentation, no habitat modification and no inbreeding depression arising from the genetic consequences of a small population size). Low intrinsic rates of population increase are associated with the life history strategy known as "K-selection". K-selected animals are usually successful at maintaining relatively small, persistent population sizes in relatively constant environments. Consequently, sawfishes are not able to respond rapidly to additional and new sources of mortality resulting from changes in their environment. Musick (1999) and Musick *et al.* (2000) noted that intrinsic rates of increase less than 10 percent (0.1) were low, and make the population particularly vulnerable to excessive mortalities and rapid population declines, after which recovery may take decades.

Diet and Feeding

Bigelow and Schroeder (1953) reported that sawfishes in general subsist chiefly on small schooling fishes, such as mullets and clupeids. They also reported that they feed to some extent on crustaceans and other bottom dwelling inhabitants. Breder (1952), in summarizing the literature on observations of sawfish feeding behavior, noted that they attack fish by slashing sideways through schools, and often impale the fish on their rostral teeth. Prey are subsequently scraped off the teeth by rubbing them on the bottom and then ingested whole. The oral teeth of sawfish are ray-like, having flattened cusps that are better suited to crushing or gripping.

Morphological Characteristics

All modern sawfishes appear in some respects to be more shark-like than ray-like, with only the trunk and especially the head ventrally flattened. All sawfish snouts are extended as a long, narrow, flattened, rostral blade with a series of transverse teeth along either edge. The rostrum has a saw-like appearance and hence the name sawfish. The presence of this rostrum separates sawfishes from all other skates and rays.

The smalltooth sawfish *P. pectinata* has 20 to 34 rostral teeth on each side of the rostrum (Bigelow and Schroeder, 1953; Thorson, 1973; McEachran and Fechhelm, 1998; Compagno and Last, 1999). *P. zijsron,* has perhaps the longest rostrum of any living sawfish, ranging to at least 5 ft or 1.66 m in length. The rostral tooth count for *P. zijsron* varies between 23 and 37 (typically 25–34) per side. *Pristis zijsron* is distinguished from *A. cuspidata* by its sharply pointed rostral teeth (versus blade-like), greater number of rostral teeth per side (23–37 versus 18–25), presence of dermal denticles over the entire body, and the lack of a developed lower caudal fin lobe (Last and Stevens, 1994). *Pristis*

zijsron is distinguished from *P. clavata* by its narrow-based and moderately tapering rostrum (versus wide-based and strongly tapering), greater number of rostral teeth per side (23–37 versus 18–23), and the lack of a developed lower caudal fin lobe. In addition, *P. zijsron* reaches a larger maximum size (24 ft or 7.3 m or larger) than does *P. clavata* (10 ft or 3.1 m in total length). *Pristis microdon* can attain lengths of up to 7 m and is distinguished from other sawfishes by a combination of the following characteristics: first dorsal fin anterior to the pelvic fins; caudal fin bearing a conspicuous ventral lobe; and 18–23 teeth on the rostrum (Last and Stevens 1994; Compagno and Last 1998).

Analysis of Petition

We evaluated the information provided in the petition and all other information readily available in our files to determine if it presented substantial scientific or commercial information indicating that the petitioned actions may be warranted for the five valid species of sawfish (*A. cuspidata; P. clavata; P. microdon; P. zijsron;* and all non-listed population(s) of *P. pectinata*). The petition provides some information on the species, including administrative measures recommended, scientific and common name, description, habitat, and range and states that all five factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of the petitioned species. In particular, the petitioner states that all of the petitioned sawfish species are threatened by habitat loss and degradation resulting from human population growth, coastal destruction and pollution, and fisheries (targeted and incidental). The petitioner also states that all six species of sawfish are threatened by the international shark fin trade, curio trade, and inadequate regulatory protection programs worldwide. Information on population status and trends for all six species of sawfish is included. Additionally, the petition states that, due to the difficulty in differentiating between all sawfish species, enforcement of trade bans is very difficult.

Data are not available to determine the actual number or size of most remaining populations of sawfish, but all known populations of sawfishes have severely declined based on publication and museum records, negative scientific survey records, anecdotal fisher observations, and limited catch per unit effort information. Many populations have been extirpated or are near extirpation from large areas of their former range, with no or only very few observations since the 1960s. Interviews with fishers (structured and unstructured) have been undertaken in several countries in recent years to obtain information on recent and historic catches (*e.g.,* Doumbouya, 2004; Saine, 2004). In most range states, these species are now only very sporadically recorded. Due to their unique morphological characteristics, it is unlikely that individuals would not report catching a sawfish.

We summarize our analysis and conclusions regarding the specific ESA section 4(a)(1) factors affecting the species' risk of extinction below.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The information presented in the petition on the species states coastal development has caused substantial losses in coastal zone habitats through agricultural and urban development, commercial activities, dredge-and-fill activities, boating erosion, and diversions of freshwater. The petitioner also refers to information on habitat degradation and loss listed in the 2007 proposal by the U.S. to list all species of sawfish under the Conventions on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Additionally, information in our files indicates that the distribution and range of all species of sawfish has become severely fragmented and significant range contractions have occurred.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information from the petition and in our files suggests that the primary threat to all sawfish species is from fisheries. Sawfishes are caught as bycatch in various fishing gears (rod and reel, shrimp nets, trawls, and gill nets). Sawfish species are highly susceptible to entanglement in fishing gears because their toothed-rostrum makes it difficult to avoid entanglement in almost all types of mesh nets. The saw becomes entangled in the net and fishers often harm the animal (remove their saw or kill them) when removing them from their nets. In some locations where they are or were abundant enough, sawfishes have been directly targeted because of their value.

Sawfishes are utilized for a wide variety of products. Among the most common products is the sawfish rostrum. Rostrums have long been a favorite marine curio (Migdalski, 1981) with large rostra commanding impressive prices (McDavitt, 1996). Rostra are sometimes decorated with elaborate designs or grotesque faces. These folk art rostra are sometimes fashioned into elaborate sheaths for knives. Sawfish rostra are also utilized as ceremonial weapons in the folk religion of Taiwan. McDavitt (1996) reported that sawfish rostra are also used in traditional medicine in Asia and in Mexico City. Rostra are dried and powdered, and then infused into a medicinal tea, which is used to treat "whooping cough, bronchitis, laryngitis and diseases of the respiratory tract in general" (Watson, 2004).

Sawfish rostral teeth have been the preferred material used to manufacture artificial "spurs" for use as weapons in Peruvian cockfighting (Cogorno Ventura, 2001). The rostral teeth are mostly obtained from Brazil, Ecuador, Panama, and various Caribbean countries. Charvet-Almeida (2002) and McDavitt and Charvet-Almeida (2004) determined that rostra find their way into the international cockfighting market from Brazil. Sawfish rostral teeth have been favored over other natural spur materials (such as deer antler, sea turtle shell, sea-lion teeth, mammal bones, and stingray spines), as systematic testing revealed that sawfish teeth were more durable, and have a sufficiently porous surface to cause greater body damage to the opponent (McDavitt and Charvet-Almeida, 2004).

Sawfish products are also utilized for medicinal purposes. Four sawfish products are listed as materia medica in traditional Chinese medicine: liver, ova, and bile (Han and Xu, 1992) as well as the sawfish rostra (McDavitt, 1996). The bile of sawfishes is thought to remove phlegm and diminish inflammation from such conditions as fall injuries, rheumatoid arthritis, and cholecystitis (inflammation of the gall bladder) (McDavitt, 1996).

Sawfishes are highly prized as exhibit animals in public aquaria because of their charismatic nature (McDavitt, 1996). They command high prices in the aquarium trade. Because of their large fins with high fin needle content (a tasteless gelatinous product used to make shark fin soup), sawfish fins are valued for shark fin soup in Asia. Although few fin dealers advertise the type of fins they trade, one Hong Kong vendor designates two trade names used for sawfish fins: huang jiao (described in English as "saw shark,") and mian qun (labeled as "yellow shovel nose" in English).

Disease and Predation

The petition states that disease from parasitic infections and natural predation from sharks and crocodiles

are not responsible for the dramatic decline of the populations of sawfish. The petitioner also states that entanglement in fishing gears increases the risk of predation for sawfish due to their reduced population size. The petitioner states that disease and predation may now be a greater threat for all five petitioned species since their populations have declined, but does not provide information to substantiate their claims. There is no evidence in our files that indicate that disease and/or predation are negatively affecting population growth in these species.

Inadequacy of Existing Regulatory Mechanisms

As stated in the petition and in the U.S.' CITES proposal to list all sawfishes (2007), very few countries have enacted legislation specifically to protect sawfishes or manage their fisheries. Consequently, protective measures covering trade of *A. cuspidata, P. clavata, P. zijsron,* and *P. pectinata* were implemented internationally under Appendix I of CITES in 2007, making non-domestic trade of parts illegal. *Pristis microdon* was protected under Appendix II of CITES only for the purposes of live trade of animals to aquaria. Protection under Appendix I prohibits international trade in specimens of these species except when the purpose of the import is not commercial, for instance for scientific research. In these exceptional cases, trade may take place provided it is authorized by the granting of both an import permit and an export permit (or re-export certificate). Protection under Appendix II listing means international trade is allowed but an export permit or re-export certificate must be issued when it is determined that trade will not be detrimental to the survival of the species in the wild. Although all sawfishes are protected under CITES, information in our files indicates that enforcement of these regulations in various countries is difficult due to the length of the coastline, extensive internal waterways, lack of enforcement personnel, and the need for more efficient tools. Targeted fisheries for sawfish species is unlikely in most countries because abundances are so low; however, those caught as bycatch are probably kept due to their value. Thus, illegal foreign trade of sawfish parts may be ongoing in Nicaragua and Brazil and elsewhere in spite of the CITES listing and national laws (McDavitt, 2006). The Nicaraguan government imposed a temporary moratorium on targeted fishing for sawfishes in Lake Nicaragua in the early 1980s (Thorson, 1982), after the population collapsed following intensive fishing in the 1970s. The aim was to allow the population to recover, but no such recovery has occurred (McDavitt, 2002). Indonesia enacted legislation to protect sawfishes (and five other freshwater fish species) in Lake Sentani, West Papua, following severe depletion of populations in a gill net fishery (Compagno *et al.,* 2006). All Australian sawfish populations are listed as Vulnerable or Endangered, either under Australia's Commonwealth Environment Protection and Biodiversity Conservation Act or by the Australian Society for Fish Biology. Environment Australia was petitioned to list all species of sawfish on the Endangered Species List and India's Ministry of Environment and Forests has protected sawfishes under the Wildlife Protection Act since 2001.

Other Natural or Manmade Factors

Both information in the petition and information in our files indicate that the future abundance of all sawfish species is limited by their life history characteristics. Sawfish have slow growth rates, late maturity, a long life span, and low fecundity rates. K-selected animals are usually successful at maintaining relatively small, persistent population sizes in relatively constant environments. Conversely, they are not able to respond rapidly to additional sources of mortality, such as overexploitation and habitat degradation.

Summary of Section 4(a)(1) Factors

In summary, the petition and information in our files present substantial information that four of the five of section 4(a)(1) factors are likely affecting the continued existence of the five petitioned sawfish species. Interactions between and among these various threats may further exacerbate the impacts of each of the threats, such that there may be an extinction risk of concern for each of the five species.

Petition Finding

After reviewing the information contained in the petition and in our files, we conclude there is not substantial scientific or commercial information indicating that *P. pristis* is a valid species eligible for listing. However, the petition and information in our files present substantial scientific or commercial information indicating that the petitioned action may be warranted for the other five species of sawfish throughout their entire range (*A. cuspidata, P. clavata, P. microdon, P. zijsron,* and all non-listed population(s) of *P. pectinata*). In accordance with section 4(b)(3)(B) of the ESA and NMFS' implementing regulations (50 CFR 424.14(b)(2)), we will commence a review of the status of these five species and make a determination within 12 months of receiving the petition as to whether the petitioned action is warranted. The U.S. DPS of *P. pectinata* is already listed as an endangered species. As part of the status review, we will apply our DPS policy to the non-listed populations. If warranted, we will publish a proposed rule to list one or more species. If we propose any listings we will solicit public comments before developing and publishing a final rule.

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on whether *A. cuspidata, P. clavata, P. microdon, P. zijsron,* and all non-listed population(s) of *P. pectinata* are endangered or threatened. Specifically, we are soliciting information in the following areas: (1) Historical and current distribution and abundance of these species throughout their range; (2) historical and current population trends; (3) life history in marine environments, (4) curio, meat, shark fin or other trade data; (5) taxonomy; (6) any current or planned activities that may adversely impact the species; (7) ongoing or planned efforts to protect and restore the species and their habitats; (8) population structure information relevant to distinct population segments; and (9) management, regulatory, and enforcement information. We request that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

References Cited

A complete list of references is available upon request from the Protected Resources Division on NMFS Southeast Regional Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 1, 2011.

Samuel D. Rauch III,

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

[FR Doc. 2011–5107 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 44
Monday, March 7, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committees on Collaborative Governance, Regulation, Rulemaking, Judicial Review, and Adjudication

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of public meetings of five committees of the Assembly of the Administrative Conference of the United States (ACUS). Each committee will consider a research report and will prepare recommendations on the subject of the report for consideration by the full Conference. Complete details regarding each committee's meeting, related research reports, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to the committee can be found in the "Research" section of the ACUS Web site, *http://www.acus.gov.*

Comments may be submitted by e-mail to *Comments@acus.gov,* with the name of the relevant committee in the subject line, or by postal mail to "[Name of Committee] Comments" at the address given below.

ADDRESSES: The meetings will be held at 1120 20th Street, NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer for the individual committee, ACUS, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION:

Committee on Collaborative Governance

The Committee on Collaborative Governance will meet to consider a report by Professor James T. O'Reilly of the University of Cincinnati College of Law concerning the "Federal Advisory Committee Act in the 21st Century." The objective of this study is to consider possible recommendations for improvements of the Act, particularly in light of technological and social developments since its passage.

Date: Wednesday, March 23, 2011, from 1 p.m. to 3:30 p.m.

Designated Federal Officer: David M. Pritzker.

Committee on Regulation

The Committee on Regulation will consider a report dealing with the timing, availability, confidentiality, and impact of comments submitted during agency rulemakings, as well as agencies' duty to reply to such comments. The consultant for this study is Professor Steven J. Balla of The George Washington University.

Date: Thursday, March 24, 2011, from 2 p.m. to 5 p.m.

Designated Federal Officer: Reeve T. Bull.

Committee on Rulemaking

The Committee on Rulemaking will consider a report on the legal issues agencies face in e-Rulemaking. The report was prepared by ACUS staff member Bridget C.E. Dooling.

Date: Friday, March 25, 2011, from 9 a.m. to 12 noon.

Designated Federal Officer: Emily F. Schleicher.

Committee on Judicial Review

The Committee on Judicial Review will consider a report dealing with possible solutions to the procedural trap posed by 28 U.S.C. 1500, a statute that regulates the Court of Federal Claims' jurisdiction over claims pending in other courts. The report was prepared by ACUS staff members Emily F. Schleicher and Jonathan R. Siegel.

Date: Monday, March 28, 2011, from 2 p.m. to 5 p.m.

Designated Federal Officer: Reeve T. Bull.

Committee on Adjudication

The Committee on Adjudication will consider a report by ACUS staff member Funmi E. Olorunnipa regarding the use of video hearings by Federal agencies, which examines the costs and benefits of video hearings as they are currently being used and the possibilities for expansion of use by Federal agencies.

Date: Wednesday, March 30, 2011, from 9 a.m. to 12 noon.

Designated Federal Officer: Funmi E. Olorunnipa.

Dated: March 2, 2011.

Jonathan R. Siegel,

Director of Research & Policy.

[FR Doc. 2011–5062 Filed 3–4–11; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 1, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: In-depth Case Studies of Advanced Modernization Initiatives.

OMB Control Number: 0584–0547.

Summary of Collection: The Supplemental Nutrition Assistance Program (SNAP) is a critical source of support for many low-income families and individuals. In recent years, states have implemented new procedures and policies in order to reduce SNAP administrative costs while maintaining or improving program access. These changes often referred to as modernization-incorporate technology, administrative restructuring, community partnering, and policy simplification. Together, the Food, Conservation, and Energy Act of 2008, which amended Section 11 of the Food and Nutrition Act of 2008, 7 U.S.C. 2020, and the Food Nutrition Act of 2008, which amended Section 17 of 7 U.S.C. 2026, authorizes the Food and Nutrition Service (FNS) to develop standards for identifying major operational changes, require States to provide any information required by the U.S. Department of Agriculture, and authorizes FNS to undertake research that will help improve the administration and effectiveness of SNAP.

Need and Use of the Information: Information for the In-depth Case Studies will build on the findings from a previous data collection effort, Enhancing Food Stamp Certification: Food Stamp Modernization Efforts. To obtain a detailed and comprehensive view of the implementation of SNAP modernization initiatives, data will be collected via in-person interviews, focus group discussions, and through administrative case records, application statistics, performance data, and other relevant materials. The project has seven research objectives: (1) Update the existing state profiles of modernization efforts and identify the geographic and caseload coverage affected by modernization changes; (2) describe how key certification, recertification, and case management functions have changed; (3) describe the current roles and responsibilities of state and local SNAP staff, vendors, and partners and how they have changed; (4) document the relationship between SNAP modernization initiatives and stakeholder satisfaction; (5) describe the current performance of each state's modernization initiatives and the level of outcome variability within each state; (6) compare performance before, during, and after modernization; and (7) document the main takeaway points for use by other states and for future study consideration. Without the detailed case study, FNS would need to rely on the states' general statements regarding program operations and aggregate statistics on modernization initiatives, resulting in an incomplete understanding of how modernization has affected the implementation of SNAP.

Description of Respondents: Individual or households; not-for-profit institutions; business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1,353.

Frequency of Responses: Reporting: Other (one time only)

Total Burden Hours: 1,802.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–5005 Filed 3–4–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Madera County Resource Advisory Committee will be meeting in North Fork, California on March 9th and March 16th, 2011. The purpose of these meetings will be to discuss and approve submitted proposals for funding as authorized under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) for expenditure of Payments to States Madera County Title II funds.

DATES: The meetings will be held on March 9th, and March 16th, 2011 from 6:30 p.m. to 8:30 p.m. in North Fork, CA.

ADDRESSES: The meetings will be held at the Bass Lake Ranger District, 57003 Road 225, North Fork, California, 93643. Send written comments to Julie Roberts, Madera County Resource Advisory Committee Coordinator, c/o Sierra National Forest, Bass Lake Ranger District, at the above address, or electronically to *jaroberts@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Julie Roberts, Madera County Resource Advisory Committee Coordinator, (559) 877–2218 ext. 3159.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Madera County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meetings.

Dated: January 24, 2011.

Dave Martin,

District Ranger.

[FR Doc. 2011–5084 Filed 3–4–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee will meet in Placerville, California. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The RAC will deliberate and recommend projects for the Forest Supervisor's approval.

DATES: The meeting will be held on March 21, 2011 beginning at 6 p.m.

ADDRESSES: The meeting will be held at the El Dorado Center of Folsom Lake College, Community Room, 6699 Campus Drive, Placerville, CA 95667.

Written comments should be sent to Frank Mosbacher; Forest Supervisor's Office; 100 Forni Road; Placerville, CA 95667. Comments may also be sent via email to *fmosbacher@fs.fed.us,* or via facsimile to 530–621–5297.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 100 Forni Road; Placerville, CA 95667. Visitors are encouraged to call ahead to 530–622–5061 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Frank Mosbacher, Public Affairs Officer, Eldorado National Forest Supervisors Office, (530) 621–5268. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: The RAC will deliberate and recommend projects for the Forest Supervisor's approval. More information will be posted on the

Eldorado National Forest Web site @*http://www.fs.fed.us/r5/eldorado.* A public comment opportunity will be made available following the business activity. Future meetings will have a formal public imput period for those following the yet to be developed public imput process.

Dated: March 1, 2011.

John M. Sherman,

Acting Forest Supervisor.

[FR Doc. 2011–5090 Filed 3–4–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shoshone Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shoshone Resource Advisory Committee (Committee) will meet in Thermopolis, Wyoming. The Committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to elect a new Chairperson and review Title II project proposals.

DATES: The meeting will be held March 22, 2011, 9 a.m.

ADDRESSES: The meeting will be held at Big Horn Federal Savings, 643 Broadway, Thermopolis, Wyoming.

FOR FURTHER INFORMATION CONTACT: Olga Troxel, Resource Advisory Committee Coordinator, Shoshone National Forest Supervisor's Office, (307) 578–5164. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Elect a new Resource Advisory Committee Chairperson (2) Preliminary review of Title II project proposals (3) Refine the process for prioritizing and recommnending projects. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided.

Dated: February 28, 2011.

Joseph G. Alexander,

Forest Supervisor.

[FR Doc. 2011–4913 Filed 3–4–11; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman's Perspective, (5) Project Presentations, (6) Next Agenda.

DATES: The meeting will be held on March 24, 2011 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Randy Jero, Committee Coordinator, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave, Willows, CA 95988. (530) 934–1269; e-mail *rjero@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 21, 2011 will have the opportunity to address the committee at those sessions.

Dated: March 1, 2011.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 2011–5088 Filed 3–4–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Arkansas Advisory Committee to the Commission will convene by conference call at 2 p.m. and adjourn at approximately 3 p.m. on Tuesday, March 29, 2011. The purpose of this meeting is to continue planning the Committee's civil rights project "A Second Look at Who Is Enforcing Civil Rights in Arkansas * * * Is There a Need for a Civil Rights Agency?"

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 47594138. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on March 22, 2011.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by April 8, 2011. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, on February 28, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–5013 Filed 3–4–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce 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: U.S. Census Bureau.

Title: Census Barriers, Attitudes, and Motivators Survey (CBAMS) II.

OMB Control Number: 0607–0947.

Form Number(s): None. All information will be collected electronically.

Type of Request: Reinstatement, with change, of an expired collection.

Burden Hours: 1,757.

Number of Respondents: 4,200.

Average Hours per Response: 25 minutes.

Needs and Uses: Every ten years, the U.S. Census Bureau is constitutionally mandated to count everyone (citizens and non-citizens) residing in the United States. An accurate count is critical for many reasons including but not limited to:

- Congressional reapportionment,
- Redistricting congressional boundaries;
- Community planning; and
- Distribution of public funds and program development.

To facilitate the data collection effort for the 2010 Census, the Census Bureau developed an Integrated Communications Plan (ICP). The role of the ICP was to increase public awareness and to motivate people to respond to the census promptly, saving millions of taxpayer dollars. The specific objectives of the ICP were to:

- Increase mail response;
- Improve cooperation with enumerators; and
- Improve overall accuracy and reduce differential undercount.

The Census Bureau conducted the Census Barriers, Attitudes, and Motivators Survey (CBAMS) in 2008 to gain an in-depth understanding of the public's opinions about the 2010 Census. The results of that survey revealed that there were distinct mindsets toward the Census, and customizing outreach to these attitudinal mindsets is an important part of the Census Bureau's communications strategy for 2020 and beyond. In CBAMS II, the Census Bureau will extend that research to further specify the segments and to learn about their stability and structure. The results of CBAMS II will inform the market research program and communications for Census 2020.

The primary purpose of CBAMS II is to understand Census mindsets. The data collected will not be used to produce official Census Bureau statistics. The purpose of the data collection is to shape the research and communications program for Census 2020. Findings from this survey will determine how often and what kind of market research is conducted over the next decade to support communications for Census 2020. Findings will also be used to shape messages directly. The analytic goals of CBAMS II are to:

- Determine the best method for identifying Census mindsets by evaluating the reliability of mindset creation algorithms from CBAMS I and CBAMS II.
- Understand more about the profiles of the mindsets, especially addressing the following questions:
- Is there a qualitative distinction between people who are unaware of the Census and those who lack extensive knowledge of the Census?
- What are the characteristics and belief profiles of people whose attitude toward the Census is negative?
- What sub-segments exist within the large positive segments?
- Measure attitudes toward the possible use of administrative records to supplement or replace the Census and relate those attitudes to Census mindsets

One of the outcomes from CBAMS II will be a survey tool to identify the likely segment of respondents to future Census market research surveys.

When possible, respondents to CBAMS II will be matched to the Census Planning Database (PDB) by tract number to link to Census 2000 census participation and hard-to-count data. In cases where a link to tract can be made, we will further roll cases back up into an eight-cluster segmentation scheme based on the PDB. The sample source for in person interviews will be the Delivery Sequence File from the United States Postal Service, so for these records, we will have addresses and be able to determine Census tract. For the telephone respondents, we will collect zip codes to facilitate this linkage, but we will not collect address information. In fact, we will not collect any personally identifiable information from any respondent.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 2, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–5065 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Mahan Airways, Gatewick LLC; Pejman Mahmood Kosarayanifard and Mahmoud Amini; Order Renewing Order Temporarily Denying Export Privileges and Also Making That Temporary Denial of Export Privileges Applicable to Related Persons

Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran;

Gatewick LLC, a/k/a Gatewick Freight & Cargo Services, a/k/a/Gatewick Aviation Services, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates;

and

P.O. Box 52404, Dubai, United Arab Emirates;

and

Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;

Pejman Mahmood Kosarayanifard, a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates;

Mahmoud Amini G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates;

and

P.O. Box 52404, Dubai, United Arab Emirates;

and

Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates;

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR Parts 730–774 (2010) ("EAR" or the "Regulations"), I hereby grant the request of the Bureau of Industry and Security ("BIS") to renew for 180 days the September 3, 2010 Order Temporarily Denying the Export Privileges of Mahan Airways and Gatewick LLC ("TDO"), as I find that renewal of the TDO is necessary in the public interest to prevent an imminent violation of the EAR.[1] Additionally, pursuant to Section 766.23 of the Regulations, including the provision of notice and an opportunity to respond, I find it necessary to add the following persons as related persons in order to prevent evasion of the TDO:

Pejman Mahmood Kosarayanifard, a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates;

and

Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates;

and

P.O. Box 52404, Dubai, United Arab Emirates;

and

Mohamed Abdulla Alqaz Building, Al Maktoum Street Al Rigga, Dubai, United Arab Emirates.

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement ("Assistant Secretary"), signed a TDO denying Mahan Airways' export privileges for a period of 180 days on the grounds that its issuance was necessary in the public interest to prevent an imminent violation of the Regulations. The TDO also named as denied persons Blue Airways, of Yerevan, Armenia ("Blue Airways of Armenia"), as well as the "Balli Group Respondents," namely, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of the United Kingdom. The TDO was issued *ex parte* pursuant to Section 766.24(a), and went into effect on March 21, 2008, the date it was published in the **Federal Register.**

On July 18, 2008, in accordance with Section 766.23 of the Regulations, Assistant Secretary Jackson issued an Order adding to the TDO both Blue Airways FZE, of Dubai, United Arab Emirates ("the UAE"), and Blue Airways, also of Dubai, United Arab Emirates ("Blue Airways UAE"), as persons related to Blue Airways of Armenia. (Blue Airways of Armenia, Blue Airways FZE, and Blue Airways UAE are hereinafter collectively referred to as the "Blue Airways Respondents").[2]

On September 17, 2008, Assistant Secretary Jackson renewed the TDO for an additional 180 days in accordance with Section 766.24 of the Regulations, via an order effective upon issuance, and on March 16, 2009, the TDO was similarly renewed by then-Acting Assistant Secretary Kevin Delli-Colli.[3] On September 11, 2009, Acting Assistant Secretary Delli-Colli renewed the TDO for an additional 180 days against Mahan Airways.[4] BIS did not seek renewal of the TDO against the Blue Airways Respondents, which BIS believed at that time had ceased operating, or against the Balli Group Respondents.

On March 9, 2010,[5] and September 3, 2010, I renewed the TDO against Mahan Airways for an additional 180 days. The September 3, 2010 Renewal Order added Gatewick LLC ("Gatewick") to the TDO as a related person in accordance with Section 766.23, after written notice to Gatewick and consideration of its August 26, 2010 response, which was signed and submitted by Mahmoud Amini as Gatewick's General Manager. As discussed in the September 3, 2010 Renewal Order, that response confirmed Gatewick's role as Mahan Airway's sole booking agent for cargo and freight forwarding services in the UAE.

On February 7, 2011, BIS, through its Office of Export Enforcement ("OEE"), filed a written request for renewal of the TDO against Mahan Airways and Gatewick. Notice of the renewal request was provided to Mahan Airways and Gatewick by delivery of a copy of the request in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to any aspect of renewal of the TDO has been received from Mahan Airways, while Gatewick has not at any time appealed the related person determination I made as part of the September 3, 2010 Renewal Order.[6]

Additionally, BIS has requested that I add both Pejman Mahmood Kosarayanifard a/k/a Kosarian Fard ("Kosarian Fard") and Mahmoud Amini as related persons in accordance with Section 766.23. Both Kosarian Fard and Mahmoud Amini were provided notice of BIS's intent to add them to the TDO pursuant to Section 766.23(b) of the Regulations. No opposition was received from Kosarian Fard, while Mahmoud Amini submitted a short e-mail response received on October 17, 2010, opposing his addition to the TDO.[7]

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24(d)(3) of the EAR, the sole issue to be considered in determining whether to continue a TDO is whether the TDO should be renewed to prevent an "imminent" violation of the EAR as defined in Section 766.24. "A violation may be 'imminent' either in time or in degree of likelihood." 15 CFR 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that "the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical and negligent [.]" *Id.* A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

B. The TDO and BIS's Request for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO and the TDO renewals in this matter and the evidence developed over the course of this investigation indicating Mahan Airways' clear willingness to continue to disregard U.S. export controls and the TDO. The initial TDO was issued as a result of evidence that showed that Mahan Airways and other parties engaged in conduct prohibited by the

[1] The September 3, 2010 Order was published in the **Federal Register** on September 15, 2010.

[2] The Related Persons Order was published in the **Federal Register** on July 24, 2008.

[3] The September 17, 2008 Renewal Order was published in the **Federal Register** on October 1, 2008. The March 16, 2009 Renewal Order was published in the **Federal Register** on March 25, 2009.

[4] The September 11, 2009 Renewal Order was published in the **Federal Register** on September 18, 2009.

[5] The March 9, 2010 Renewal Order was published in the **Federal Register** on March 18, 2010.

[6] A party named or added as a related person may not oppose the issuance or renewal of the underlying temporary denial order, but may file an appeal of the related person determination in accordance with Section 766.23(c).

[7] The e-mail response from Amini is dated October 13, 2010 but was received by BIS on October 17, 2010.

EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s ("Aircraft 1–3"), items subject to the EAR and classified under Export Control Classification Number ("ECCN") 9A991.b, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Mahan Airways was involved in the attempted re-export of three additional U.S.-origin Boeing 747s ("Aircraft 4–6") to Iran.

As discussed in the September 17, 2008 TDO Renewal Order, evidence presented by BIS indicated that Aircraft 1–3 continued to be flown on Mahan Airways' routes after issuance of the TDO, in violation of the Regulations and the TDO itself.[8] It also showed that Aircraft 1–3 had been flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline. In addition, as more fully discussed in the March 16, 2009 Renewal Order, in October 2008, Mahan Airways caused Aircraft 1–3 to be deregistered from the Armenian civil aircraft registry and subsequently registered the aircraft in Iran. The aircraft were relocated to Iran and were issued Iranian tail numbers, including EP–MNA and EP–MNB, and continued to be operated on Mahan Airways' routes in violation of the Regulations and the TDO.

Moreover, as discussed in the September 11, 2009 and March 9, 2010 Renewal Orders, Mahan Airways continued to operate at least two of Aircraft 1–3 in violation of the Regulations and the TDO,[9] and also committed an additional knowing and willful violation of the Regulations and the TDO when it negotiated for and acquired an additional U.S.-origin aircraft. The additional aircraft was an MD–82 aircraft, which was subsequently painted in Mahan Airways livery and flown on multiple Mahan Airways' routes under tail number TC–TUA.

The March 9, 2010 Renewal Order also noted that a court in the United Kingdom ("U.K.") had found Mahan Airways in contempt of court on February 1, 2010, for failing to comply with that court's December 21, 2009 and January 12, 2010 orders compelling Mahan Airways to remove the Boeing 747s from Iran and ground them in the Netherlands. Mahan Airways and the Balli Group Respondents have been litigating before the U.K. court concerning ownership and control of Aircraft 1–3. Blue Airways LLC also has been a party to that litigation. In a letter to the U.K. court dated January 12, 2010, Mahan Airways' Chairman indicated, inter alia, that Mahan Airways opposes U.S. Government actions against Iran, that it continued to operate the aircraft on its routes in and out of Tehran (and had 158,000 "forward bookings" for these aircraft), and that it wished to continue to do so and would pay damages if required by that court, rather than ground the aircraft.

The September 3, 2010 Renewal Order pointed out that Mahan Airways' violations of the TDO extended beyond operating U.S.-origin aircraft in violation of the TDO and attempting to acquire additional U.S.-origin aircraft. In February 2009, while subject to the TDO, Mahan Airways participated in the export of computer motherboards, items subject to the Regulations and designated as EAR99, from the United States to Iran, via the UAE, in violation of both the TDO and the Regulations, by transporting and/or forwarding the computer motherboards from the UAE to Iran. Mahan Airways' violations were facilitated by Gatewick, which not only participated in the transaction, but also has stated to BIS that it is Mahan Airways' sole booking agent for cargo and freight forwarding services in the UAE.

Additional evidence obtained by OEE indicates that Aircraft 1–3 remain in Mahan Airways' possession, control, and livery in Tehran, Iran. In a recent January 24, 2011 filing in the U.K. Court, Mahan Airways asserted that Aircraft 1–3 are not being used, but stated in pertinent part that the aircraft are being maintained especially "in an airworthy condition" and that, depending on the outcome of its U.K. Court appeal, the aircraft "could immediately go back into service * * * on international routes into and out of Iran." Mahan Airways' January 24, 2011 submission to U.K. Court of Appeal, at p. 25, paragraphs 108,110. This clearly stated intent, both on its own and in conjunction with Mahan Airways' prior misconduct and statements, demonstrates the need to renew the TDO in order to prevent imminent future violations.

C. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the record here, I find that the evidence presented by BIS convincingly demonstrates that Mahan Airways has repeatedly violated the EAR and the TDO, that such knowing violations have been significant, deliberate and covert, and that there is a likelihood of future violations. I find that, as alleged by OEE, the violations have involved both U.S.-origin aircraft and computer motherboards that are subject to the Regulations. A renewal of the TDO is needed to give notice to persons and companies in the United States and abroad that they should continue to cease dealing with Mahan Airways in export transactions involving items subject to the EAR. Such a

TDO is consistent with the public interest to prevent imminent violation of the EAR.[10]

Accordingly, I find pursuant to Section 766.24 that renewal of the TDO for 180 days against Mahan Airways is necessary in the public interest to prevent an imminent violation of the EAR.

III. Addition of Related Persons

A. Legal Standard

Section 766.23 of the Regulations provides that "[i]n order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders * * * " 15 CFR 766.23(a).

B. Analysis and Findings

OEE has requested that Kosarian Fard and Mahmoud Amini be added as related persons in order to prevent evasion of the TDO. As noted above, both individuals were provided written notice of OEE's intent to add them as a related person to the TDO. Kosarian Fard did not respond, while Mahmoud Amini sent only a short e-mail to OEE received on October 17, 2010. As discussed in the September 3, 2010 Order, a significant business relationship or connection exists between Gatewick and Mahan Airways. Gatewick had previously told BIS during a 2009 post shipment verification that Gatewick acts as Mahan Airways' sole booking agent for cargo and freight forwarding services in the UAE, a major transshipment hub. In its

[8] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[9] The third Boeing 747 appeared to have undergone significant service maintenance and may not have been operational at the time of the March 9, 2010 Renewal Order.

[10] My findings are made pursuant to Section 766.24 and the Regulations, and are not based on the contempt finding against Mahan Airways in the U.K. litigation. I note, however, that Mahan Airways' statements and actions in that litigation are consistent with my findings here.

August 26, 2010 response, Gatewick confirmed this relationship and provided a copy of the General Cargo Sales Agreement ("GSA") between Gatewick and Mahan Airways, signed on Gatewick's behalf by Kosarian Fard, its owner and managing director. No challenge or assertion has been made by Gatewick, or by Kosarian Fard or Mahmoud Amini, that this relationship has ceased. Gatewick continues, in short, to have the ability, with Mahan Airways' authorization and agreement, to use Mahan's import code to clear UAE customs and then re-book cargo on outbound Mahan flights, including to Iran.

Gatewick's corporate registration documents revealed other connections or relationships between Gatewick, Kosarian Fard, and Mahan Airways, as well as the Blue Airways Respondents. Moreover, as discussed infra, Kosarian Fard's extensive connections to Mahan extend well beyond his ownership interests and active participation at Gatewick.

As previously discussed in the September 3, 2010 Renewal Order, Kosarian Fard played a prominent role in Mahan Airways' acquisition of Aircraft 1–3 discussed above, as indicated by evidence obtained by BIS during its investigation and as acknowledged by Kosarian Fard in his testimony in the U.K. litigation referenced above. Kosarian Fard was a founder, the majority shareholder, and the Commercial Director of Blue Airways of Armenia. In that capacity, he signed the Boeing 747 lease agreements with the Balli Group that ultimately led to Mahan Airways' acquisition of Aircraft 1–3 in violation of the Regulations. As previously cited in the September 3, 2010 Renewal Order, Kosarian Fard's written testimony in the U.K. litigation included the following concerning his "close relationship" with Mahan Airways and some of the acts he took at its direction:

> As I have said, I was majority shareholder of Blue [Airways] but in the summer of 2007, I agreed to sell a 51% stake in Blue to Skyco (UK) Ltd. I did this at the request of Mahan. Given my close relationship with Mahan, I did not ask questions but, again, acted on the basis of the trust I had in Mr. Arabnejad and Mr. Mahmoudi [two Mahan Airways' directors].

Kosarian Fard Written Statement to U.K. Commercial Court (signed and dated May 27, 2009 by hand), at page 7, paragraph 12.

Kosarian Fard's ties to Mahan not only established the connection between Mahan and Gatewick, but clearly demonstrate his own long standing and wide reaching business relationship with Mahan. In addition, Kosarian Fard has not contested BIS's related person's notice. In accordance with all of the foregoing, I find that Kosarian Fard is a related person under Section 766.23 and should be added to the TDO to prevent evasion of the Order.

As indicated above, Mahmoud Amini did make a short response to the related person's notice via an e-mail received on October 17, 2010. In that e-mail, Amini asserted that his "position in Gatewick aviation services is only domestic, General Manager," and that he is "not "official manager of the company[.]" This effort by Amini to limit or discount his role at Gatewick is undermined, however, by the fact that less than two months earlier, he signed Gatewick's August 26, 2010 submission to BIS as its "General Manager" and in doing so made no assertion that his duties were "only domestic." In addition, given the nature and significance of a General Manager, Amini is positioned to significantly determine Gatewick's conduct and activities, as also evidenced by the central role he played in Gatewick's August 26, 2010 submission to BIS, hardly what one would expect of an employee with duties that are "only domestic" and unrelated to the significant Gatewick-Mahan Airways relationship.

Amini also asserted in his e-mail that the "only division of Gatewick" in "contact with Mahan" is "Gatewick freight and cargo[.]" Amini provides no supporting evidence for this assertion. In addition, he never made such a distinction in his submission on Gatewick's behalf on August 26, 2010, and no such distinction is made in the GSA between Mahan Airways and Gatewick.

Accordingly, I find that based on his position of authority and responsibility at Gatewick and Gatewick's significant business or trade ties with Mahan Airways, Mahmoud Amini is related not only to Gatewick, but also in the conduct of trade or business to Mahan Airways. Like Kosarian Fard, Mahmoud Amini should be added to the TDO as a related person under Section 766.23 in order to prevent evasion of that order.

IV. Order

It is therefore ordered:

First, that Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; Gatewick LLC, A/K/A Gatewick Freight & Cargo Services, A/K/A Gatewick Aviation Service, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; Pejman Mahmood Kosarayanifard A/K/A Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates; and Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; and when acting for or on their behalf, any successors or assigns, agents, or employees (each a "Denied Person" and collectively the "Denied Persons") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations ("EAR"), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know

that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Sections 766.24(e) and 766.23(c)(2) of the EAR, Mahan Airways, Gatewick LLC, Mahmoud Amini and/or Kosarian Fard may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.[11]

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Mahan Airways as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Mahan Airways and each related person and shall be published in the **Federal Register**. This Order is effective immediately and shall remain in effect for 180 days.

[11] A party named or added to temporary denial order as a related person may appeal its inclusion as a related person, but not the underlying basis for the issuance of the TDO. See Section 766.23(c).

Dated: February 25, 2011.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2011–5114 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–817, A–560–805, A–475–826, A–588–847, A–580–836]

Certain Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, Japan, and the Republic of Korea; Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 1, 2010, the Department of Commerce (the Department) initiated the second sunset reviews of the antidumping duty orders on certain cut-to-length carbon-quality steel plate (CTL Plate) from India, Indonesia, Italy, Japan, and the Republic of Korea, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted expedited (120-day) sunset reviews for these orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4136 and (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2010, the Department published the notice of initiation of the second sunset reviews of the antidumping duty orders on CTL Plate from India, Indonesia, Italy, Japan, and the Republic of Korea, pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 74685 (December 1, 2010).

The Department received notices of intent to participate from the following domestic parties within the deadline specified in 19 CFR 351.218(d)(1)(i): ArcelorMittal Steel USA Inc., Evraz Claymont Steel, Evraz Oregon Steel Mills, Nucor Corporation, and SSAB N.A.D (collectively "the domestic interested parties"). These parties claimed interested party status under section 771(9)(C) of the Act and 19 CFR 351.102(b), as domestic manufacturers and producers of the domestic like product.

The Department received complete (collective) substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the antidumping duty orders on CTL Plate from India, Indonesia, Italy, Japan, and the Republic of Korea.

Scope of the Orders

The products covered under the CTL Plate antidumping duty orders are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of the orders are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within the scope. Also, specifically included in the scope of the orders are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in the scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the

carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the orders unless otherwise specifically excluded. The following products are specifically excluded from the orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

Regarding the scope of the order for Japan, the following additional exclusions apply with respect to abrasion-resistant steels: NK–EH–360 (NK Everhard 360) and NK–EH–500 (NK Everhard 500). NK–EH–360 has the following specifications: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; (b) Heat Treatment: controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max. NK–EH–500 has the following specifications: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; (b) Heat Treatment: Controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max.

The merchandise subject to the orders is currently classifiable in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Cut-To-Length Carbon-Quality Steel Plate from India, Indonesia, Italy, Japan, and the Republic of Korea" from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (Decision Memo), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on CTL Plate from India, Indonesia, Italy, Japan, and the Republic of Korea would be likely to lead to continuation or recurrence of dumping at the rates listed below:

Exporter/manufacturer	*Margin percentage*
India:	
Steel Authority of India, Ltd	42.39
All Others	42.39
Indonesia:	
PT Gunawan Dianjaya/PT Jaya Pari Steel Corporation	50.80
PT Krakatau Steel	52.42
All Others	50.80
Italy:	
Palini and Bertoli S.p.A	7.64
All Others	7.64
Japan:	
Kawasaki Steel Corporation	9.46
Kobe Steel, Ltd	59.12
Nippon Steel Corporation	59.12
NKK Corporation	59.12
Sumitomo Metal Industries, Ltd	59.12
All Others	9.46
Republic of Korea:	
Dongkuk Steel Mill Co., Ltd	2.98
All Others	2.98

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 1, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–5125 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 7, 2011.

SUMMARY: On November 1, 2010, the Department of Commerce ("Department") published in the **Federal Register** the notice of initiation of the third sunset review of the antidumping duty order on certain cased pencils ("pencils") from the People's Republic of China ("PRC"), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-Year ("Sunset") Review,* 75 FR 67082 (November 1, 2010). The Department has conducted an expedited sunset review of this order pursuant to section 751(c)(3)(B) of the Act and 19

CFR 351.218(e)(1)(ii)(C)(2). As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the margins identified in the "Final Results of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Seth Isenberg or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0588 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order that covers pencils from the PRC was published in the **Federal Register** on December 28, 1994. *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China,* 59 FR 66909 (December 28, 1994), amended at *Certain Cased Pencils From the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance With Final Court Decision,* 64 FR 25275 (May 11, 1999). On November 1, 2010, the Department initiated the third sunset review of this order, pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 67082 (November 1, 2010). The Department received a notice of intent to participate from domestic interested parties Sanford Corp.; General Pencil Co., Inc.; and Musgrave Pencil Co. (collectively, "Petitioners"), within the deadline specified in 19 CFR 351.218(d)(1)(i). Petitioners claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States. The Department also received a notice of intent to participate from Dixon Ticonderoga Company ("Dixon"), within the deadline specified in 19 CFR 351.218(d)(1)(i). Dixon claimed interested party status under section 771(4)(B) of the Act, as an importer of the subject merchandise that is related to a foreign producer and exporter of the subject merchandise.

On December 1, 2010, the Department received a substantive response from Petitioners. In addition to meeting the other requirements of 19 CFR 351.218(d)(3), Petitioners provided information on the volume and value of exports of pencils from the PRC. The Department did not receive a substantive response from Dixon. The Department did not receive adequate substantive responses, or any response at all, from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on pencils from the PRC.

Scope of the Order

Imports covered by the order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.,* with erasers, *etc.*) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: (1) Length: 13.5 or more inches; (2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and (3) core length: Not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: Novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated March 1, 2011, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 7046 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty order on pencils from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/producers/exporters	Margin (percent)
China First Pencil Co., Ltd	8.60
Shanghai Three Star Stationery Industry Corp [1]	0.00
Shanghai Lansheng Corp	19.36
Shanghai Foreign Trade Corp	11.15
Guangdong Provincial Stationery & Sporting Goods Import & Export Corp [2]	53.65

Manufacturers/producers/exporters	Margin (percent)
PRC–Wide Rate	53.65

[1] In the original order and subsequent administrative reviews, China First Pencil Co. Ltd ("China First") and Shanghai Three Star Stationery Industry Co., Ltd. ("Three Star") were treated as separate entities. In the 1999–2000 administrative review, the Department determined that China First and Three Star should henceforth be treated as a single entity. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 67 FR 48612 (July 25, 2002) ("*99–00 Pencils Final*") and accompanying Issues and Decision Memorandum at Comment 12, amended at *Notice of Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China,* 67 FR 59049 (September 19, 2002). The Department continued to treat China First and Three Star as a single entity in the four successive administrative reviews. In the 2006–2007 administrative review, the Department determined that due to new evidence regarding the relationship between China First and Three Star there was no longer a sufficient basis to combine the two companies. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 74 FR 33406 (July 13, 2009) and accompanying Issues and Decision Memorandum at Comment 1, amended at *Certain Cased Pencils from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review,* 74 FR 45177 (September 1, 2009). The Department continues to view China First and Three Star as separate and distinct entities as a result of the 2006–2007 administrative review determination. *See Certain Cased Pencils From the People's Republic of China; Final Results of the Antidumping Duty Administrative Review,* 75 FR 38980 (July 7, 2010).

[2] The Department originally excluded from the order exports made by Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. ("Guangdong") and produced by Three Star. However, the Department determined in the 1999–2000 administrative review that the Guangdong/Three Star sales chain was no longer excluded from the order, and that all merchandise exported by Guangdong was subject to the cash deposit requirements at the PRC–Wide Rate. *See 99–00 Pencils Final* and accompanying Issues and Decision Memorandum at Comment 1, amended at 67 FR 59049.

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 1, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–5123 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; Partial Rescission of Administrative Review; and Intent To Rescind Administrative Review, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce. ("Department") is conducting the first administrative review of the antidumping duty order on small diameter graphite electrodes ("SDGE") from the People's Republic of China ("PRC"), covering the period August 21, 2008, through January 31, 2010. The Department has preliminarily determined that during the period of review ("POR") respondents in this proceeding have made sales of subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. The Department is also rescinding this review for those exporters for which requests for review were timely withdrawn.[1] For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption. Furthermore, we determine that four companies for which a review was requested have not been responsive, and thus have not demonstrated entitlement to a separate rate.[2] As a result, we have preliminarily determined that they are part of the PRC-wide entity, and continue to be subject to the PRC-wide entity rate.[3] Further, the Department intends to rescind this administrative review with respect to UK Carbon & Graphite ("UKCG") if the Department concludes that there were no entries, exports, or sales of the subject merchandise to the United States during the POR.[4] Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

DATES: *Effective Date:* March 7, 2011.

FOR FURTHER INFORMATION CONTACT: Lindsey Novom or Frances Veith, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; *telephone:* (202) 482–5256 or (202) 482–4295, respectively.

Background

On February 26, 2009, the Department published in the **Federal Register** the antidumping duty order on SDGE from the PRC.[5] On February 1, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on SDGE from the PRC.[6] On February 23, February 25, and February 26, 2010, the Department received timely requests for an administrative review of this antidumping duty order in accordance with 19 CFR 351.213(b) from Fushun Jinly Petrochemical Carbon Co., Ltd ("Fushun Jinly"), Xinghe County Muzi Carbon Co., Ltd. ("Muzi Carbon"), and Beijing Fangda Carbon Tech Co., Ltd. ("Beijing Fangda"), Chengdu Rongguang

[1] *See* "Partial Rescission of the Administrative Review" section below.

[2] *See* "Separate Rates" section below.

[3] *See* "The PRC–Wide Entity, PRC–Wide Rate, and Use of Adverse Facts Available" section below.

[4] *See* "Intent to Rescind, in Part, the Administrative Review" section below.

[5] *See Antidumping Duty Order: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 8775 (February 26, 2009).

[6] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Reviews,* 75 FR 5037 (February 1, 2010).

Carbon Co., Ltd. ("Rongguang"), Fangda Carbon New Material Co., Ltd. ("Fangda Carbon"), Fushun Carbon Co., Ltd. ("Fushun Carbon"), and Hefei Carbon Co., Ltd. ("Hefei") (collectively "the Fangda Group").[7] On February 26, 2010, the Department also received a timely request for an administrative review of 112 companies from SGL Carbon LLC and Superior Graphite Co. ("Petitioners").[8]

On March 26, 2010, Petitioners submitted pre-initiation comments regarding respondent selection. On March 30, 2010, the Department released to interested parties CBP data covering POR imports of SDGE from the PRC, and invited these parties to comment on the Department's respondent selection process.[9]

On March 30, 2010, the Department initiated an administrative review of the antidumping duty order on SDGE from the PRC for 112 individually named firms.[10] On April 29, 2010, the Department received four separate-rate certifications, two separate-rate applications, of which one company also filed a no-shipment certification and a request for rescission of this administrative review.[11] On May 6, 2010, the Department issued the respondent selection memorandum in which it selected the Fangda Group and Fushun Jinly as respondents for individual review.[12]

On May 26, 2010, the Department sent the antidumping duty questionnaires to the Fangda Group and Fushun Jinly. On June 28, 2010, we received from Petitioners a timely request for rescission of review for 100 of the 112 companies for which the Department initiated a review.[13] Between June 4, 2010, and December 30, 2010, the Fangda Group and Fushun Jinly responded to the Department's original and supplemental questionnaires.

On October 19, 2010, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review by the full 120 days allowed under section 751(a)(3)(A) of the Act to February 28, 2011.[14]

Between January 10 and January 21, 2011, the Department conducted verifications of two of the Fangda Group entities (Beijing Fangda and Fushun Carbon), as well as, Fushun Jinly and one of its tollers, Fushun Hexie Carbon Product Co., Ltd ("Hexie").[15]

Period of Review

The POR is August 21, 2008, through January 31, 2010.

Scope of the Order

The merchandise covered by this order includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by this order also includes graphite pin joining systems for small diameter graphite electrodes, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the small diameter graphite electrode. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to this order are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 8545.11.0000. The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

Connecting Pins—Model Match Methodology

On August 13, 2010, the Department determined that all connecting pins for SDGE, whether or not they are attached to, sold with, or sold separately from the SDGE are covered by the scope of this proceeding. We invited parties to submit comments regarding the appropriate methodology for reporting normal value for sales where connecting pins are sold with SDGEs at one price per metric ton. On August 19, 2010, both Petitioners and the Fangda Group submitted comments on reporting and model match methodology where connecting pins are sold with SDGEs as one finished product.

We have previously determined that graphite connecting pins produced by respondents are covered by the description in the "Scope of the Order" section, above, and are subject merchandise for purposes of determining appropriate fair value comparisons to U.S. sales.[16] We compared respondent's U.S. sales of SDGEs, including connecting pins, to its corresponding NV. In making the fair value comparisons, we compared NV to respondents' individual export price ("EP") based on the physical characteristics of the SDGE control number, or CONNUM, reported by respondents. For more information, *see* Fangda Carbon and Fushun Jinly's respective analysis memoranda.[17]

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the Fangda Group for Beijing Fangda and Fushun Carbon, and information submitted by Fushun Jinly for itself and its toller Hexie for use in our preliminary results. *See* the

[7] In the *Initiation Notice,* the firm names for these named companies were listed as follows: (1) "Fushun Jinli Petrochemical Carbon Co., Ltd. (aka Fushun Jinly Petrochemical Carbon Co., Ltd.)," (2) "Xinghe County Muzi Carbon Co., Ltd. (aka Xinghe County Muzi Carbon Plant)," (3) Beijing Fangda was listed as shown above, (4) "Chengdu Rongguang Carbon Co., Ltd. (subsidiary of Liaoning Fangda Group Industrial Co., Ltd.)," (5) "Fangda Carbon New Material Co., Ltd. (subsidiary of Liaoning Fangda Group Industrial Co., Ltd. and formerly Lanzhou Hailong New Material Co)," (6) "Fushun Carbon Co., Ltd. (subsidiary of Liaoning Fangda Group Industrial Co., Ltd. and formerly Fushun Carbon Plant)," and (7) "Hefei Carbon Co., Ltd. (subsidiary of Liaoning Fangda Group Industrial Co., Ltd.)." *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 15679, 15681–15683 (March 30, 2010) ("*Initiation Notice*")

[8] *See id.*

[9] *See* the Department's March 30, 2010, Memorandum to "All Interested Parties," in which we requested comments regarding respondent selection based on the released CBP data.

[10] *See Initiation Notice.*

[11] *See* "Separate Rates," "Partial Rescission of the Administrative Review," and "Intent to Rescind, in Part, the Administrative Review" sections below.

[12] *See* the Department's memorandum regarding, "Respondent Selection in the Antidumping Duty Administrative Review of Small Diameter Graphite Electrodes from the People's Republic of China," dated May 6, 2010.

[13] *See* "Partial Rescission of the Administrative Review" section below.

[14] *See Small Diameter Graphite Electrodes From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the First Administrative Review of the Antidumping Duty Order,* 75 FR 64250 (October 19, 2010).

[15] *See* the "Verification" section below for additional information.

[16] *See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049, 2051 (January 14, 2009) ("*SDGE Final LTFV Determination*"), and accompanying Issues and Decision Memorandum at Comment 2.

[17] *See* the Department's memorandums entitled, "1st Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for the Fangda Group Companies," ("Fangda Group's Preliminary Analysis Memo") and "1st Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Fushun Jinly Petrochemical Carbon Co., Ltd" ("Fushun Jinly's Preliminary Analysis Memo"), dated concurrently with this notice.

Department's verification reports on the record of this investigation, available in the Central Records Unit, Room 7046 of the main Department building, with respect to these entities.[18] For all verified companies, we used standard verification procedures, including the examination of relevant accounting and production records, as well as original source documents provided by respondents.

Partial Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the initiation notice of the requested review. Further, pursuant to 19 CFR 351.213(d)(1), the Department is permitted to extend this time if it is reasonable to do so.

For all but seven of the 112 companies for which the Department initiated an administrative review, Petitioners were the only party that requested the review. On June 28, 2010, Petitioners timely withdrew their review requests for 100 of the 105 companies in which the Petitioners were the only party that had requested an administrative review. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to the companies named as follows in the *Initiation Notice:*

PARTIAL RESCISSION OF THE ADMINISTRATIVE REVIEW

	Firm Name
1	5-Continent Imp. & Exp. Co., Ltd. (aka Sichuan 5-Continent Imp. & Exp. Co., Ltd.).
2	Acclcarbon Co., Ltd.
3	Allied Carbon (China) Co., Limited.
4	Anssen Metallurgy Group Co., Ltd. (aka AMGL).
5	Beijing Xincheng Sci-Tech. Development Inc. (formerly Beijing Xinchengze Inc.) (subsidiary of XC Carbon Group).
6	Brilliant Charter Limited.
7	Chengdelh Carbonaceouse Elements Factory.
8	Chengdu Jia Tang Corp.
9	China Shaanxi Richbond Imp. & Exp. Industrial Corp. Ltd.
10	China Xingyong Carbon Co., Ltd. (aka Xinghe Xingyong Carbon Co., Ltd.).
11	CIMM Group Co., Ltd. (formerly China Industrial Mineral & Metals Group).
12	Dalian Carbon & Graphite Corporation.
13	Dalian Hongrui Carbon Co., Ltd.
14	Dalian Horton International Trading Co., Ltd.
15	Dalian LST Metallurgy Co., Ltd.
16	Dalian Shuangji Co., Ltd.
17	Dalian Thrive Metallurgy Imp. & Exp. Co., Ltd.
18	Datong Xincheng Carbon Co., Ltd.
19	Dechang Shida Carbon Co., Ltd. (aka Sichuan Dechang Shida Co., Ltd.; and subsidiary of Shida Carbon Group).
20	Dignity Success Investment Trading Co., Ltd.
21	Double Dragon Metals and Mineral Tools Co., Ltd.
22	Foset Co., Ltd. (aka Shanxi Foset Carbon Co. Ltd.).
23	GES (China) Co., Ltd. (aka Shanghai GC Co., Ltd.).
24	Guangdong Highsun Yongye (Group) Co., Ltd. (formerly Moaming Yongye (Group) Co., Ltd.).
25	Guanghan Shida Carbon Co., Ltd. (aka Sichuan Guanghan Shida Carbon Co., Ltd.; a subsidiary of Shida Carbon Group).
26	Haimen Shuguang Carbon Industry Co., Ltd.
27	Handan Hanbo Material Co., Ltd.
28	Hebei Long Great Wall Electrode Co., Ltd. (aka Chang Cheng Chang Electrode Co., Ltd. and Laishui Long Great Wall Electrode Co. Ltd.).
29	Heilongjiang Xinyuan Metacarbon Company, Ltd. (Heilongjiang Xinyuan Carbon Products Co., Ltd.).
30	Henan Sanli Carbon Products Co., Ltd.
31	Hopes (Beijing) International Co., Ltd.
32	Hunan Mec Machinery and Electronics Imp. & Exp. Corp.
33	Hunan Yinguang Carbon Factory Co., Ltd.
34	Inner Mongolia Xinghe County Hongyuan Electrical Carbon Factory.
35	Jiang Long Carbon.
36	Jiangsu Yafei Carbon Co., Ltd.
37	Jiaozuo Zhongzhou Carbon Products Co., Ltd.
38	Jichun International Trade Co., Ltd. of Jilin Province.
39	Jiexiu Juyuan Carbon Co., Ltd./Jiexiu Ju-Yuan & Coaly Co., Ltd.
40	Jilin Songjiang Carbon Co Ltd.
41	Jinyu Thermo-Electric Material Co., Ltd.
42	Kaifeng Carbon Company Ltd.
43	Kingstone Industrial Group Ltd.
44	L & T Group Co., Ltd.
45	Lanzhou Carbon Co., Ltd./Lanzhou Carbon Import & Export Corp. (aka Fangda Lanzhou Carbon Joint Stock Company Co. Ltd.; Lanzhou Hailong Technology; Lanzhou Hailong New Material Co.).
46	Lanzhou Ruixin Industrial Material Co., Ltd.
47	LH Carbon Factory of Chengde.
48	Lianyungang Jinli Carbon Co., Ltd. (aka Lianyungang Jianglida Co., Ltd.).
49	Liaoyang Carbon Co. Ltd.

[18] *See* the Department's memorandums entitled, "Verification of the Sales and Factors Response of the Fangda Group Companies in the Antidumping Review of Small Diameter Graphite Electrodes from the People's Republic of China," ("Fangda Group's Verification Report") and "Verification of the Sales and Factors Response of Fushun Jinly Petrochemical Carbon Co., Ltd in the Antidumping Review of Small Diameter Graphite Electrodes from the People's Republic of China" ("Fushun Jinly's Verification Report"), dated concurrently with this notice.

PARTIAL RESCISSION OF THE ADMINISTRATIVE REVIEW—Continued

	Firm Name
50	Linghai Hongfeng Carbon Products Co., Ltd.
51	Linyi County Lubei Carbon Co., Ltd.
52	Nantong Falter New Energy Co., Ltd.
53	Nantong River-East Carbon Joint Stock Co., Ltd. (aka Nantong River-East Carbon Co., Ltd.).
54	Nantong Yangtze Carbon Corp. Ltd.
55	Orient (Dalian) Carbon Resouces Developing Co., Ltd.
56	Peixian Longxiang Foreign Trade Co. Ltd.
57	Qingdao Grand Graphite Products Co., Ltd.
58	Qingdao Haosheng Metals Imp. & Exp. Co., Ltd. (aka Quingdao Haosheng Metals & Minerals Imp. & Exp. Co.,Ltd.).
59	Qingdao Liyikun Carbon Development Co., Ltd. (aka Qingdao Likun Graphite Co., Ltd.).
60	Qingdao Ruizhen Carbon Co., Ltd.
61	Rt Carbon Co., Ltd.
62	Ruitong Carbon Co., Ltd.
63	Shandong Basan Carbon Plant.
64	Shanghai Carbon International Trade Co., Ltd. (affiliate of Xuzhou Jianglong Carbon Manufacture Co., Ltd.).
65	Shanghai GC Co., Ltd. (affiliated with GES (China) Co., Ltd.).
66	Shanghai Jinneng International Trade Co., Ltd. (affiliated with Jinneng Group).
67	Shanghai P.W. International Ltd.
68	Shanghai Topstate International Trading Co., Ltd.
69	Shanxi Datong Energy Development Co., Ltd. (aka Datong Carbon; subsidiary of Shanxi Jinneng Group Co., Ltd.).
70	Shanxi Jiexiu Import and Export Co., Ltd.
71	Shanxi Jinneng Group Co., Ltd.
72	Shanxi Yunheng Graphite Electrode Co., Ltd. (affiliated with Datong Carbon Plant).
73	Shenyang Jinli Metals & Minerals Imp. & Exp. Co., Ltd.
74	Shida Carbon Group.
75	Shijaizhuang Carbon Co., Ltd.
76	Sichuan Shida Trading Co., Ltd. (subsidiary of Shida Carbon Group).
77	Sichuan GMT International Inc.
78	Sinosteel Anhui Co., Ltd. (subsidiary of Sinosteel Corp.).
79	Sinosteel Sichuan Co., Ltd. (subsidiary of Sinosteel Corp.).
80	SMMC Group Co., Ltd.
81	Tangshan Kimwan Special Carbon & Graphite Co., Ltd.
82	Tengchong Carbon Co., Ltd.
83	Tianjin (Teda) Iron & Steel Trade Co., Ltd.
84	Tianjin Yue Yang Industrial & Trading Co., Ltd.
85	Tianzhen Jintian Graphite Electrodes Co., Ltd.
86	Tielong (Chengdu) Carbon Co., Ltd.
87	United Carbon Ltd.
88	World Trade Metals & Minerals Co., Ltd.
89	Xinghe Xinyuan Carbon Products Co., Ltd.
90	Xinyuan Carbon Co., Ltd.
91	Xuanhua Hongli Refractory and Mineral Company.
92	Xuchang Minmetals & Industry Co., Ltd.
93	Xuzhou Jianglong Carbon Manufacture Co., Ltd. (aka Xuzhou Carbon Co., Ltd.; formerly Xuzhou Electrode Factory).
94	Yangzhou Qionghua Carbon Trading Ltd.
95	Yixing Huaxin Imp & Exp Co. Ltd.
96	Youth Industry Co., Ltd.
97	Zhengzhou Jinyu Thermo-Electric Material Co., Ltd.
98	Zibo Continent Carbon Factory (aka Shandong Zibo Continent Carbon Factory, aka Zibo Wuzhou Tanshun Carbon Co., Ltd.).
99	Zibo DuoCheng Trading Co., Ltd.
100	Zibo Lianxing Carbon Co., Ltd. (affiliated with Lianxing Carbon (Shandong) Co., Ltd., Weifang Lianxing Carbon Co., Ltd., Lianxing Carbon Qinghai Co., Ltd., and Lianxing Carbon Science Institute).

Intent To Rescind, in Part, the Administrative Review

Petitioners' timely request for administrative reviews included a request to conduct an administrative review of UKCG. After initiating an administrative review of UKCG,[19] the Department on April 29, 2010, received a certification of no shipments from UKCG and a request to rescind the administrative review of UKCG. On May 18, 2010, the Department sent a supplemental questionnaire to UKCG requesting information pertaining to its input suppliers and its manufacturing operations in the United Kingdom. On June 1, 2010, UKCG responded to the Department's supplemental questionnaire. On May 5, and May 21, 2010, Petitioners submitted to the Department requests to keep UKCG in this administrative review and to seek further information and clarification from the company to ascertain the merit of its claim for rescission. On July 19, 2010, UKCG submitted factual information, and on July 29, 2010, Petitioners submitted rebuttal comments on UKCG's factual information. On August 9, 2010, UKCG submitted additional information and rebuttal comments on Petitioners July 29, 2010, submission.

We made inquiries with CBP as to whether there were any entries of subject merchandise from the PRC exported by UKCG during the POR. *See* message number 1039304, dated February 8, 2011. We received no responses to those inquiries indicating that any shipments of subject merchandise from UKCG from the PRC entered during the POR. Further, in our

[19] *See Initiation Notice,* 75 FR at 15683.

respondent selection process, we released CBP data covering POR imports of SDGE from the PRC to interested parties. Upon examination of this data, we found no entries of subject merchandise from the PRC exported by UKCG during the POR.[20] Based on the above, we preliminarily find that UKCG had no shipments of SDGE from the PRC during the POR, and we intend to rescind the review with respect to UKCG pursuant to 19 CFR 351.213(d)(3).

Interested parties may submit comments on the Department's intent to rescind this review with respect to UKCG no later than 30 days after the date of publication of these preliminary results of review. The Department will issue the final rescission (if appropriate), which will include the results of its analysis of issues raised in any comments received, in the final results of review.

Non-Market-Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country.[21] In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department conducts an antidumping duty administrative review of imports from an NME country, section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer's factors of production ("FOP"), valued in a surrogate market-economy ("ME") country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOPs using "to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are: (A) At a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise."

With respect to the Department's selection of surrogate country, Petitioners argue that the Ukraine is the most appropriate surrogate country from which to derive surrogate factor values for the PRC because Ukraine's per capita gross national income ("GNI") is economically comparable to the PRC and is also a significant producer of SDGE.[22] Petitioners also state that in the alternative, the Department should rely on India to derive surrogate factor values for the PRC, as it did in the investigation. Although Petitioners suggested we use Ukrainian financial statements as a source for valuing financial ratios and placed one such financial statement on the record, Petitioners additionally placed on the record financial ratio calculations of an Indian producer.

On November 8, 2010, respondents Fangda Group and Fushun Jinly submitted rebuttal comments to Petitioners' surrogate country submission, in which respondents argue that India is both economically comparable to the PRC and a significant producer of identical merchandise (*i.e.,* SDGE) and the administrative record establishes that India is a superior data source as compared to Ukraine. Respondents maintain that the record contains complete and audited Indian financial statements from two companies that produce identical merchandise to SDGE while the financial statement from the Ukraine is incomplete and not fully translated. Respondents also contend that Petitioners' reliance on Ukraine's GNI as the basis for replacing India because Ukraine's GNI is closer to the PRC's than that of India's GNI, is unavailing. Respondents argue that it is the Department's practice to select surrogate values from a country that is at a level of economic development "comparable" to the NME country, not on the basis of the country that is most comparable in terms of GNI. Further, the Department's August 30, 2010, memorandum which set forth a non-exhaustive list of six countries determined to be at a level of economic development comparable to the PRC (inclusive of both the India and Ukraine), specifically noted that all of the listed countries "are economically comparable to the PRC" and "{t}he surrogate countries on the list are not ranked and should be considered equivalent in terms of economic comparability."[23] Additionally, respondents maintain that the availability of two companies in India from which to calculate surrogate financial ratios further establishes that India is a superior data source compared to the Ukraine. Thus, respondents argue that the Department should continue to use India as the primary surrogate country in this proceeding.

In the instant review, the Department has identified India, Indonesia, the Philippines, Ukraine, Thailand, and Peru as a non-exhaustive list of countries that are at a level of economic development comparable to the PRC and for which good quality data are most likely available.[24] The Department uses per capita GNI as the primary basis for determining economic comparability.[25] Once the countries that are economically comparable to the PRC have been identified, the Department selects an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether data for valuing FOPs are both available and reliable. Like the PRC, India has a broad and diverse production base, and the Department has reliable data from India that it can use to value the FOPs, while for Ukraine there are not reliable Ukrainian surrogate financial statements on the record with which to calculate the financial ratios.[26] Therefore, the Department has determined that it is appropriate to use India as a surrogate country for the purposes of this administrative review, pursuant to section 773(c)(4) of the Act, based on the following: (1) It is at a similar level of economic development to the PRC; (2) it is a significant producer of comparable merchandise, and (3) the Department has reliable data from India that it can use to value the FOPs. Accordingly, we have calculated NV using Indian prices when available and

[20] *See* the Department's March 30, 2010 Memorandum to "All Interested Parties."

[21] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[22] *See* Petitioners' submission regarding the appropriate surrogate country to be used for purposes of valuing FOPs in this administrative review, dated October 14, 2010.

[23] *See* the Department's letter to all interested parties regarding the "Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes ("SDGE") from the People's Republic of China ("PRC")," dated September 29, 2010 ("Surrogate Countries Memorandum"), at 2.

[24] *See* Attachment to the Surrogate Countries Memorandum.

[25] *See* the Department's Policy Bulletin No. 04.1, regarding, "Non-Market Economy Surrogate Country Selection Process," (March 1, 2004) ("*Policy Bulletin 04.1*"), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull04-1.html.*

[26] *See* the Department's memorandum to the file regarding the preliminary factor values used in this administrative review, dated concurrently with this notice ("Factor Valuation Memorandum").

appropriate to value each respondent's FOPs.[27]

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review, interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of these preliminary results.[28]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping duty rate.[29] It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

In order to demonstrate separate-rate status eligibility, the Department normally requires entities, for whom a review was requested, and who were assigned a separate rate in a previous segment of this proceeding, to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate.[30] For entities that were not assigned a separate rate in the previous segment of a proceeding, to demonstrate eligibility for such, the Department requires a separate-rate application.[31] On April 29, 2010, Shanghai Jinneng International Trade Co., Ltd. ("Jinneng"), Sichuan Guanghan Shida Carbon Co., Ltd. ("Shida"), and Muzi Cabon each submitted separate rate certifications. On June 1, 2010, Qingdao Hao Sheng Metals & Minerals Import & Exports Co., Ltd. ("Hao Sheng Metals") and UKCG submitted a separate rate application. On June 28, 2010, Petitioners withdrew their review requests for Jinneng, Shida, and Hao Sheng Metals. For further information, *see* the "Partial Rescission of the Administrative Review" section above. The Department also intends to rescind the administrative review with respect to UKCG. For further information, *see* the "Intent to Rescind, in Part, the Administrative Review" section above.

In this administrative review, of the five entities not selected for individual review (*i.e.,* (1) Muzi Carbon, (2) Shijiazhuang Huanan Carbon Factory ("Huanan Carbon"), (3) Sinosteel Jilin Carbon Co., Ltd./Sinosteel Jilin Carbon Import & Export Co., Ltd. ("Sinosteel Jilin"), (4) Jilin Carbon Graphite Material Co., Ltd. ("Jilin Carbon"), and (5) Jilin Carbon Import and Export Company ("Jilin Carbon I&E")) for which the review has not been rescinded or for which the Department does not intend to rescind the review, only one company, Muzi Carbon, submitted separate-rate information. The remaining four companies (Huanan Carbon, Sinosteel Jilin, Jilin Carbon, and Jilin Carbon I&E) did not provide either a separate rate application or separate rate certification, as applicable, and will be considered part of the PRC-wide entity. *See* "The PRC-Wide Rate, PRC-Wide Entity, and Use of Adverse Facts Available" section below.

The two mandatory respondents (*i.e.,* the Fangda Group and Fushun Jinly) and Muzi Carbon have provided company-specific information and each stated that it meets the criteria for the assignment of a separate rate.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[32]

The evidence provided by the Fangda Group, Fushun Jinly, and Muzi Carbon supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.[33]

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[34]

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. For the Fangda Group, Fushun Jinly, and Muzi Carbon, we determine that the evidence on the record supports

[27] *See* Surrogate Value Memorandum; *see also* "Factor Valuations" section, below.

[28] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record, alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[29] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 24892, 24899 (May 6, 2010), unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 59217 (September 27, 2010).

[30] *See Initiation Notice,* 75 FR at 15680.

[31] *Id.*

[32] *See Sparklers,* 56 FR at 20589.

[33] *See* Beijing Fangda's, Fushun Carbon's, Fangda Carbon's, Rongguang's, and Heifei's Section A Questionnaire Responses, dated June 4, 2010; Fushun Jinly's Section A Questionnaire Response, dated June 7, 2010; and Muzi Carbon's Separate Rate Certification, dated April 29, 2010.

[34] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) Each respondent sets its own export prices independent of the government and without the approval of a government authority; (2) each respondent retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each respondent has the authority to negotiate and sign contracts and other agreements; and (4) each respondent has autonomy from the government regarding the selection of management.[35] Additionally, each of these companies' questionnaire responses indicate that its pricing during the POR does not involve coordination among exporters.

The evidence placed on the record of this review by the Fangda Group, Fushun Jinly, and Muzi Carbon demonstrates an absence of *de jure* and *de facto* government control with respect each company's respective exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, we are preliminarily granting the Fangda Group, Fushun Jinly, and Muzi Carbon each a separate rate.

Margin for Separate Rate Company

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. For the exporters subject to a review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis,* or based entirely on adverse facts available ("AFA").[36]

As discussed above, the Department received a timely and complete separate rate certification from Muzi Carbon, who is an exporter of SDGE from the PRC during the POR and who was not selected as a mandatory respondent in this review. In this segment, this company has demonstrated its eligibility for a separate rate, as discussed above. Consistent with the Department's practice, as the separate rate, we have established a margin for Muzi Carbon based on the weighted-average of the rates we calculated for the mandatory respondents, the Fangda Group and Fushun Jinly, excluding, where appropriate, any rates that were zero, *de minimis,* or based entirely on AFA.[37]

The PRC-Wide Entity, PRC-Wide Rate, and Use of Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia,* necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot serve as a reliable basis, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available ("AFA") information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[38] "Corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.[39] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA explains, however, that the Department need not prove that the selected facts available are the best alternative information.[40]

For the reasons discussed below, we determine that, in accordance with sections 776(a)(2) and 776(b) of the Act, the use of AFA is warranted for the preliminary results for the PRC-wide entity, including Huanan Carbon,

[35] *See* Beijing Fangda's, Fushun Carbon's, Fangda Carbon's, Rongguang's, and Heifei's Section A Questionnaire Responses, dated June 4, 2010; Fushun Jinly's Section A Questionnaire Response, dated June 7, 2010; and Muzi Carbon's Separate Rate Certification Response, dated April 29, 2010.

[36] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review,* 73 FR 8273, 8279 (February 13, 2008), unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 49162 (August 20, 2008).

[37] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[38] *See* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

[39] *See* SAA at 870.

[40] *See* SAA at 869.

Sinosteel Jilin, Jilin Carbon, and Jilin Carbon I&E.

In the *Initiation Notice,* the Department stated that the named companies that wish to qualify for separate-rate status in this proceeding must complete, as appropriate, either a separate rate application or certification.[41] In proceedings involving the PRC, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate.[42] It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[43] Huanan Carbon, Sinosteel Jilin, Jilin Carbon, and Jilin Carbon I&E did not file with the Department either a separate rate application or a certification, a requirement for qualifying for separate-rate status in this proceeding as stipulated in the *Initiation Notice.*[44]

Because Huanan Carbon, Sinosteel Jilin, Jilin Carbon, and Jilin Carbon I&E did not submit any information to establish their eligibility for separate-rate status, we find they are deemed to be part of the PRC-wide entity.[45]

Because we have determined that Huanan Carbon, Sinosteel Jilin, Jilin Carbon, and Jilin Carbon I&E are not entitled to separate rates and are now part of the PRC-wide entity, the PRC-wide entity (including Huanan Carbon, Sinosteel Jilin, Jilin Carbon, and Jilin Carbon I&E) is now under review. The PRC-wide entity did not respond to our requests for information. Because the PRC-wide entity did not respond to our requests for information, we find it necessary under section 776(a)(2) of the Act to use facts available as the basis for these preliminary results. Because the PRC-wide entity provided no information, we determine that sections 782(d) and (e) of the Act are not relevant to our analysis. We further find that the PRC-wide entity (including Huanan Carbon, Sinosteel Jilin, Jilin Carbon, and Jilin Carbon I&E) failed to respond to the Department's requests for information and, therefore, did not cooperate to the best of its ability. Therefore, because the PRC-wide entity did not cooperate to the best of its ability in the proceeding, the Department finds it necessary to use an adverse inference in making its determination, pursuant to section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding.[46]

The Court of International Trade ("CIT") and the Court of Appeals for the Federal Circuit ("Federal Circuit") have consistently upheld the Department's practice.[47] The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner."[48] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[49] In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondents' prior commercial activity, selecting the highest prior margin in this instance "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less."[50]

Because of Huanan Carbon's, Sinosteel Jilin's, Jilin Carbon's, and Jilin Carbon I&E's failure to cooperate in this administrative review, we have preliminarily assigned the PRC-wide entity, of which they are deemed to be a part, an AFA rate of 159.64 percent, which is the PRC-wide rate determined in the investigation and the rate currently applicable to the PRC-wide entity.[51]

The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the PRC-wide rate from the original investigation to determine an AFA rate is subject to the requirement to corroborate secondary information.[52]

Corroboration of Facts Available

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall to the extent practicable, corroborate that information from independent sources that are reasonably at the Department's disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[53] The SAA explains that "corroborate" means to determine that the information used has probative value. The Department has determined that to have probative value, information must be reliable and relevant.[54] The SAA also explains that

[41] *See Initiation Notice,* 75 FR at 15680.

[42] *See id.*

[43] *See id.*

[44] *See id.*

[45] *See* "Separate Rates" section above; *see also Initiation Notice,* 75 FR at 15680.

[46] *See, e.g., Certain Cased Pencils from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part,* 70 FR 76755, 76761 (December 28, 2005), unchanged in *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 38366 (July 6, 2006).

[47] *See Rhone Poulenc, Inc. v. United States,* 899 F. 2d 1185, 1190 (Fed. Cir. 1990) (upholding the Department's presumption that the highest margin was the best information of current margins) ("*Rhone Poulenc*"); *NSK Ltd. v. United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less than fair value ("LTFV") investigation); *Kompass Food Trading International v. United States,* 24 CIT 678, 683 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States,* 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

[48] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[49] *See* SAA at 870; *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005).

[50] *See Rhone Poulenc,* 899 F. 2d at 1190.

[51] *See SDGE Final LTFV Determination,* 74 FR at 2054–55.

[52] *See* Section 776(c) of the Act and the "Corroboration of Facts Available" section below.

[53] *See* SAA at 870.

[54] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller*

independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[55]

As stated above, we are applying as AFA the highest rate from any segment of this administrative proceeding, which is the PRC-wide rate of 159.64 percent. The 159.64 percent is the highest rate on the record of any segment of this antidumping duty order. In the investigation, the Department relied upon our pre-initiation analysis of the adequacy and accuracy of the information in the Petition.[56] During our pre-initiation analysis, we examined the information used as the basis of EP and NV in the Petition, and the calculations used to derive the alleged margins. Also, during our pre-initiation analysis, we examined information from various independent sources provided either in the Petition or, based on our requests, in supplements to the Petition, which corroborated key elements of the export price and NV calculations.[57] Since the investigation, the Department has found no other corroborating information available in this case, and received no comments from interested parties as to the relevance or reliability of this secondary information. Based upon the above, for these preliminary results, the Department finds that the rates derived from the Petition are corroborated to the extent practicable for purposes of the AFA rate assigned to the PRC-wide entity, including Huanan Carbon, Sinosteel Jilin, Jilin Carbon, and Jilin Carbon I&E.

Because these are the preliminary results of review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final margin for the PRC-wide entity.[58]

Fair-Value Comparisons

To determine whether the Fangda Group's and Fushun Jinly's sales of subject merchandise were made at less than NV, we compared the NV to individual EP transactions in accordance with section 777A(d)(2) of the Act. *See* "Export Price" and "Normal Value" sections of this notice, below.

Export Price

In accordance with section 772(a) of the Act, EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. For each respondent, we used EP methodology, in accordance with section 772(a) of the Act, for sales in which the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States and for sales in which constructed export price was not otherwise indicated.

We based EP on the price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling. We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India as reported in "Doing Business 2010: India" published by the World Bank.[59]

Normal Value

We compared NV to individual EP transactions in accordance with section 777A(d)(2) of the Act, as appropriate. Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by the respondents for materials, energy, labor, packing and by-products.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value ("SV") to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department normally will value the factor using the actual price paid for the input if the quantities were meaningful and where the prices have not been distorted by dumping or subsidies.[60] To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting SVs, we considered the quality, specificity, and contemporaneity of the data.[61] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to import SVs surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in

Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

[55] *See* SAA at 870; *see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada,* 70 FR 12181, 12183 (March 11, 2005).

[56] *See Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 8287 (February 13, 2008) ("*SDGE Investigation Initiation*"); *see also Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 31970, 31972 (June 5, 2008) (where the Department relied upon pre-initiation analysis to corroborate the highest margin alleged in the petition).

[57] *See SDGE Investigation Initiation,* 73 FR at 8288–8290.

[58] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation,* 65 FR 1139, 1141 (January 7, 2000), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation,* 65 FR 42669 (July 11, 2000).

[59] *See* Factor Valuation Memorandum.

[60] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill Tool Works* v. *United States,* 268 F. 3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[61] *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).

On September 29, 2010, the Department invited all interested parties to submit publicly available information to value FOPs for consideration in the Department's preliminary results of review.[62] On October 28, 2010, Petitioners, the Fangda Group, and Fushun Jinly each submitted publicly available information to value FOPs for the preliminary results and each submitted rebuttal comments on November 8, 2010. A detailed description of all SVs used for the Fangda Group and Fushun Jinly can be found in the Factor Valuation Memorandum.

For the preliminary results, in accordance with the Department's practice, except where noted below, we used data from the Indian import Statistics in the Global Trade Atlas ("GTA") and other publicly available Indian sources in order to calculate SVs for the Fangda Group's and Fushun Jinly's FOPs (*i.e.,* direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[63] The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive.[64] In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the IMF's *International Financial Statistics.*[65]

As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[66] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[67] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries.[68] Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[69]

The Fangda Group and Fushun Jinly claim that certain of their reported raw material inputs were sourced from an ME country and paid for in ME currencies. When a respondent sources inputs from an ME supplier in meaningful quantities, we use the actual price paid by respondent for those inputs, except when prices may have been distorted by dumping or subsidies.[70] Where we found ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[71] we used the actual purchases of these inputs to value the inputs.

Accordingly, we valued certain of respondents' inputs using the ME prices paid for in ME currencies for the inputs where the total volume of the input purchased from all ME sources during the POR exceeds or is equal to 33 percent of the total volume of the input purchased from all sources during the period. Where the quantity of the reported input purchased from ME suppliers was below 33 percent of the total volume of the input purchased from all sources during the POR, and were otherwise valid, we weight-averaged the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[72] Where appropriate, we added freight to the ME prices of inputs. For a detailed description of the actual values used for the ME inputs reported, *see* the Fangda Group's and Fushun Jinly's analysis memoranda, dated concurrently with this notice.

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities.[73] We valued rail freight using freight rate information from the publicly accessible Indian Ministry of Railways Web site *http://www.Indianrailways.gov.in/* to derive, where appropriate, input-specific train rates on a rupees-per-kilogram per-kilometer basis ("Rs/kg/km"). These rates are contemporaneous with the POR. We valued inland water freight using price data for barge freight reported in a March 19, 2007, article published in *The Hindu Business Line.*[74] Since the inland water transportation rates are not contemporaneous with the POR, we

[62] *See* Surrogate Countries Memorandum.

[63] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[64] *See* Factor Valuation Memorandum.

[65] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9600 (March 5, 2009) ("*Kitchen Racks Prelim*"), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 74 FR 36656 (July 24, 2009) ("*Kitchen Racks Final*").

[66] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("*OTCA 1988*") at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24.

[67] *See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4*; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; *Final Results of Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

[68] *See, e.g., Kitchen Racks Prelim,* 74 FR at 9600, unchanged in *Kitchen Racks Final.*

[69] *See id.*

[70] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[71] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

[72] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718.

[73] *See* Factor Valuation Memorandum.

[74] *See id.*

inflated the rates using the Indian WPI inflator.

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India.[75] Because the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. In other words, the Department did not inflate this value to the POR because the utility rates represent current rates, as indicated by the effective date listed for each of the rates provided.[76]

We valued steam coal using data obtained for grade C long flame and non-long flame non-coking coal reported on the 2007 Coal India Data website ("Coal India").[77]

We valued water using the revised Maharashtra Industrial Development Corporation water rates available at *http://www.midcindia.com/water-supply.*[78]

On May 14, 2010, the Federal Circuit in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010), found that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (*i.e.,* 19 U.S.C. 1677b(c))}." The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

For the preliminary results of this administrative review, the Department is valuing labor using a simple average industry-specific wage rate using earnings and/or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Factor Valuation Memorandum. The Department calculated a simple average industry-specific wage rate of $1.47 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 31 of the ISIC-Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC-Revision 3 ("Manufacture of Electrical Machinery and Apparatus NEC") to be the best available wage rate surrogate value on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and are significant producers of comparable merchandise: Ecuador, Egypt, Indonesia, Jordan, Peru, the Philippines, Thailand, and the Ukraine.[79] For further information on the calculation of the wage rate, *see* Factor Valuation Memorandum.

To value factory overhead, selling, general and administrative expenses and profit, the Department used the average of the ratios derived from the financial statements of two Indian producers: Graphite India Limited and HEG Limited (for the year ending on March 31, 2010).[80]

The Fangda Group and Fushun Jinly reported that they have recovered by-products in their production of subject merchandise and successfully demonstrated that all of them have commercial value, therefore, we have granted a by-product offset for the quantities of each respondent's reported by-products, valued using Indian GTA data.[81]

Use of Facts Available and Adverse Facts Available

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Fangda Group

At verification, we were unable to verify the supplier distances for a significant percentage of Fushun Carbon's suppliers. As a result, pursuant to section 776(a)(2)(A), (B), and (D) of the Act, we find that the use of facts available ("FA") is appropriate to determine Fushun Carbon's supplier distances, as discussed below.

Fushun Carbon at verification initially provided four maps from the Chinese internet search engine "Baidu maps" as support for its reported suppliers distance (*i.e.,* the distance from each supplier's location to Fushun Carbon's factory during the POR). In our review of these maps, we found that the Baidu map distances differed from the reported distance for these suppliers. For the preliminary results, as partial facts available, pursuant to section 776(a) of the Act, for those supplier distances where we verified that the distance Fushun Carbon reported in its FOP database differed from the Baidu maps presented to us at verification, we have applied FA and set Fushun Carbon's distance for these suppliers equal to the distances found at verification.[82]

In addition, we requested that Fushun Carbon provide maps from the same source for the remaining suppliers. However, Fushun Carbon was unable to provide the requested maps during the remaining time at verification. We were, therefore, unable to verify the supplier distance for a significant percent of Fushun Carbon's suppliers, and for the preliminary results, we determine that Fushun Carbon did not cooperate to the best of its ability by not providing the supporting documentation needed to verify its reported supplier distances.[83] Accordingly, an adverse inference in using facts available under section 776(b) of the Act is warranted for

[75] *See id.*

[76] *See, e.g., Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 32905 (June 10, 2010), and accompanying Issues and Decision Memorandum at Comment 3.

[77] *See* Factor Valuation Memorandum.

[78] *See id.*

[79] Because India (the primary surrogate country) did not report wage data in ISIC-Revision 3, which was relied upon for industry-specific wage rates in these preliminary results, it is not among the countries that the Department considered for inclusion in the average.

[80] *See id.*

[81] *See id.*

[82] *See* Fangda Group's Verification Report; *see also* the Fangda Group's Preliminary Analysis Memo.

[83] *See* Fangda Group's Verification Report.

Fushun Carbon with regard to this specific information. As partial adverse facts available, pursuant to section 776(a) and 776(b) of the Act, for those suppliers where we were not presented with Baidu maps at verification, we have set Fushun Carbon's distance for these suppliers equal to the reported supplier distance plus a percent adjustment equal to the highest percent difference found at verification. Because of the business proprietary nature of this information, please *see* the Fangda Group's Verification Report and the Fangda Group's Preliminary Analysis Memo.

Fushun Jinly

We provided Fushun Jinly with two opportunities during the administrative review to accurately report its tollers' consumption data.[84] However, Fushun Jinly did not report these data for one of its tollers and did not adequately explain why there were missing consumption data with respect to that toller.[85] As a result, we find pursuant to section 776(a)(A) and (B) of the Act that use of partial FA is appropriate to determine the consumption data with respect to this particular toller. We further find that Fushan Jinly did not cooperate to the best of its ability in responding to the Department's requests for information. Therefore, pursuant to section 776(a) and 776(b) of the Act, because Fushun Jinly did not cooperate to the best of its ability in responding to the Department's requests for information, we are applying partial adverse facts available to the missing consumption data for this particular toller. As partial adverse facts available, we are applying the highest monthly material input consumption of this toller to the relevant missing consumption data. *See* Fushun Jinly's analysis memo for further discussion.

Additionally, Fushun Jinly confirmed that one of its tollers' consumption of electricity was understated because of the toller's affiliation with an electric company.[86] As a result, as partial facts available, pursuant to section 776(a) of the Act, the Department for the preliminary results has used the electricity usage of the toller we verified (which provides the same tolling services) in lieu of the other toller's understated electricity consumption data. Due to the proprietary nature of this discussion, *see* Fushun Jinly's Preliminary Analysis Memo for further discussion.

Currency Conversion

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department has determined that the following preliminary dumping margins exist for the period August 21, 2008, through January 31, 2010:

Individually reviewed exporters	Weighted-average percent margin
SDGE from the PRC	
Beijing Fangda Carbon Tech Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., Hefei Carbon Co., Ltd., (collectively, The Fangda Group).	60.16
Fushun Jinly Petrochemical Carbon Co., Ltd	64.38
SDGE from the PRC	
Non-reviewed exporters	Weighted-average percent margin
Xinghe Country Muzi Carbon Co., Ltd	61.78
PRC-wide rate	Percent margin
PRC-wide Entity*	159.64

* This includes Huanan Carbon, Sinosteel Jilin, Jilin Carbon, and Jilin Carbon I&E.

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[87] Rebuttals to written comments may be filed no later than five days after the written comments are filed.[88] Further, parties submitting written comments and rebuttal comments are requested to provide the Department with an additional copy of those comments on a CD.

Any interested party may request a hearing within 30 days of publication of this notice.[89] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.[90]

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The

[84] *See* the Department's Initial Questionnaire, dated May 26, 2010, at section D.I.D "Reporting Requirements;" the Department's Collective A, C, and D Supplemental Questionnaire, dated November 18, 2010, at 8.

[85] *See* Fushun Jinly's fourth supplemental questionnaire response, dated December 10, 2010, at 15.

[86] *See id.*

[87] *See* 19 CFR 351.309(c).

[88] *See* 19 CFR 351.309(d).

[89] *See* 19 CFR 351.310(c).

[90] *See* 19 CFR 351.310(d).

Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of these reviews. For assessment purposes, we calculated exporter/importer- (or customer) specific assessment rates for merchandise subject to this review.[91] Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review.

For Muzi Carbon, a company receiving a separate rate that was not selected for individual review, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review consistent with section 735(c)(5)(B) of the Act. Where the weighted average ad valorem rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the Fangda Group, Fushun Jinly, and Muzi Carbon the cash deposit rate will be their respective rates established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 159.64 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, and sections 351.213 and 351.221(b)(4) of the Department's regulations.

Dated: February 28, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–5119 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–DS–P

[91] *See* 19 CFR. 351.212(b)(1).

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Applicants for Appointment to the United States-Brazil CEO Forum

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In March 2007, the Governments of the United States and Brazil established the U.S.-Brazil CEO Forum. This notice announces membership opportunities for appointment as American representatives to the U.S. Section of the Forum. The current U.S. Section term will expire on June 11, 2011.

DATES: Applications should be received no later than April 29, 2011.

ADDRESSES: Please send requests for consideration to Ashley Rosen, Office of South America, U.S. Department of Commerce, either by e-mail at *ashley.rosen@trade.gov* or by mail to U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 3203, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ashley Rosen, Office of South America, U.S. Department of Commerce, telephone: (202) 482–6311.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce and the Deputy Assistant to the President and Deputy National Security Advisor for International Economic Affairs, together with the Planalto Casa Civil Minister (Presidential Chief of Staff) and the Brazilian Minister of Development, Industry and Foreign Trade, co-chair the U.S.-Brazil CEO Forum, pursuant to the Terms of Reference signed in March 2007 by the U.S. and Brazilian governments, which set forth the objectives and structure of the Forum. The Terms of Reference may be viewed at: *http://trade.gov/press/press_releases/2007/brazilceo_02.asp.* The Forum, consisting of both private and public sector members, brings together leaders of the respective business communities of the United States and Brazil to discuss issues of mutual interest, particularly ways to strengthen the economic and commercial ties between the two countries. The Forum consists of the U.S. and Brazilian co-chairs and a Committee comprised of private sector members. The Committee will be composed of two Sections, each consisting of eight to ten members from the private sector, representing the views and interests of the private sector business community in the United States and Brazil. Each government will appoint the members to its respective Section. The Committee will provide recommendations to the two governments that reflect private sector views, needs and concerns regarding the creation of an economic environment in which their respective private sectors can partner, thrive, and enhance bilateral commercial ties to expand trade between the United States and Brazil.

Candidates are currently sought for membership on the U.S. Section of the Committee. Each candidate must be the Chief Executive Officer or President (or have a comparable level of

responsibility) of a U.S.-owned or -controlled company that is incorporated in and has its main headquarters in the United States, and that is currently doing business in both Brazil and the United States. Each candidate also must be a U.S. citizen or otherwise legally authorized to work in the United States and able to travel to Brazil and locations in the United States to attend official Forum meetings as well as independent U.S. Section and Committee meetings. In addition, the candidate may not be a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended. Applicants may not be federally-registered lobbyists, and, if appointed, will not be allowed to continue to serve as members of the U.S. Section of the Committee if the member becomes a federally-registered lobbyist.

Evaluation of applications for membership in the U.S. Section by eligible individuals will be based on the following criteria:

—A demonstrated commitment by the individual's company to the Brazilian market either through exports or investment.
—A demonstrated strong interest in Brazil and its economic development.
—The ability to offer a broad perspective and business experience to the discussions.
—The ability to address cross-cutting issues that affect the entire business community.
—The ability to initiate and be responsible for activities in which the Forum will be active.

Members will be selected on the basis of who will best carry out the objectives of the Forum as stated in the Terms of Reference establishing the U.S.-Brazil CEO Forum. The U.S. Section of the Forum should also include members that represent a diversity of business sectors and geographic locations. To the extent possible, U.S. Section members also should represent a cross-section of small, medium, and large firms.

U.S. members will receive no compensation for their participation in Forum-related activities. Individual members will be responsible for all travel and related expenses associated with their participation in the Forum, including attendance at Committee and Section meetings. Only appointed members may participate in official Forum meetings; substitutes and alternates will not be designated. U.S. members will normally serve for two-year terms, but may be reappointed.

To be considered for membership, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above: Name(s) and title(s) of the individual(s) requesting consideration; name and address of company's headquarters; location for incorporation; size of the company; size of company's export trade, investment, and nature of operations or interest in Brazil; an affirmative statement that the applicant is neither registered nor required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended; an affirmative statement that the applicant is not a federally-registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as a member of the U.S. Section of the Forum if the applicant becomes a federally registered lobbyist; and a brief statement of why the candidate should be considered, including information about the candidate's ability to initiate and be responsible for activities in which the Forum will be active. Applications will be considered as they are received. All candidates will be notified of whether they have been selected.

Dated: February 28, 2011.

Anne Driscoll,

Director for the Office of South America.

[FR Doc. 2011–5073 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 7, 2011.

FOR FURTHER INFROMATION CONTACT: Magd Zalok or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230, *telephone:* (202) 482–4162 or (202) 482–5193, respectively.

SUPPLEMENTAL INFORMATION:

Background

On June 1, 2010, the Department of Commerce (the "Department") published a notice of opportunity to request an administrative review for the period of review covering June 1, 2009, through May 31, 2010 ("POR"). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 30383 (June 1, 2010). In accordance with 19 CFR 351.213(b)(1), Globe Metallurgical Inc. ("Globe"), a domestic producer of silicon metal, requested an administrative review of the antidumping duty order on silicon metal from the PRC with respect to the following companies: Jiangxi Gangyuan Silicon Industry Company Ltd. ("Gangyuan"); Shanghai Jinneng International Trade Co., Ltd. ("Shanghai Jinneng"); and Zhejiang Kaihua Yuantong Silicon Industry Co., Ltd. ("Zhejiang").[1] No other party requested a review. The Department published the initiation of the administrative review of the antidumping duty order on silicon metal from the PRC on July 28, 2010, in which the Department initiated an administrative review of the aforementioned three companies covering the period June 1, 2009, through May 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 75 FR 44224 (July 28, 2010).

On August 18, 2010, Gangyuan and Shanghai Jinneng notified the Department that they had no entries, exports, or sales of the subject merchandise to the United States during the POR. On September 20, 2010, the Department issued a no shipments e-mail to U.S. Customs and Border Protection ("CBP") requesting notification within 10 days of receipt of the e-mail if CBP had information contrary to the no shipments claims of Gangyuan and Shanghai Jinneng. Also, the Department conducted a CBP data query to ascertain whether there were entries of subject merchandise from Gangyuan or Shanghai Jinneng. *See* August 11, 2010, Memorandum from Analyst to File entitled "2009–2010 Administrative Review of Silicon Metal from the People's Republic of China, Placing CBP Data on the Record." *See also* September 22, 2010, Memorandum from Abdelali Elouaradia, Office Director, Office 4, Import Administration to Michael Walsh, Director, AD/CVD/Revenue Policy & Programs, U.S. Customs and Border Protection entitled "Request for U.S. Entry Documents—Silicon Metal from the People's Republic of China A–570–806."

On January 11, 2011, Globe withdrew its request for review of Zhejiang. On February 15, 2011, the Department

[1] *See* Globe's June 30, 2010 "Request for 2009–10 Administrative Review" for Silicon Metal from the People's Republic of China.

issued a memorandum of intent to rescind the antidumping administrative review with respect to Gangyuan and Shanghai Jinneng and provided parties with an opportunity to comment on the Department's intent to rescind the review. *See* Silicon Metal From the People's Republic of China: Memorandum of Intent to Rescind Antidumping Duty Administrative Review, in Part, dated February 15, 2010. No parties commented on the Department's intent to rescind the review.

Rescission of Review

The Department may rescind an administrative review with respect to an exporter or producer if the Department concludes that there were no entries, exports, or sales of the subject merchandise to the United States during the POR. *See* 19 CFR 351.213(d)(3). As noted above, Gangyuan and Shanghai Jinneng reported that they did not have any entries of subject merchandise during the POR. To test Gangyuan's and Shanghai Jinneng's claim, the Department examined the CBP documentation, and found that the record provides no information to contradict Gangyuan's and Shanghai Jinneng's claim of no sales or shipments to the United States during the POR. Accordingly, pursuant to 19 CFR 351.213(d)(3), since there were no entries, export or sales of the subject merchandise by Gangyuan and Shanghai Jinneng during the POR, the Department has determined to rescind this administrative review with respect to these two companies.

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. The Department may extend this time limit if it decides that it is reasonable to do so. As noted above, Globe withdrew its request for review of Zhejiang on January 11, 2011. While Globe withdrew its request for an administrative review after the 90-day deadline, the Department has determined that it is reasonable to extend the time for Globe to file a withdrawal of its request for a review of Zhejiang because the review is not at an advanced stage such that significant resources have been expended in conducting the review. Accordingly, in accordance with 19 CFR 351.213(d)(1), we are also rescinding this review of the antidumping duty order with respect to Zhejiang.

Assessment

The Department intends to issue assessment instructions to CBP 15 days after publication of this rescission notice. The Department will instruct CBP to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Notification to Parties

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 28, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–5120 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southwest Region Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, as amended.

DATES: Written comments must be submitted on or before May 6, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Craig Heberer, (760) 431–9440 or *craig.heberer@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a renewal of a current information collection.

Regulations at 50 CFR 660.704 require that all vessels with permits issued under authority of the National Marine Fishery Service's (NMFS) Fishery Management Plan for United States (U.S.) West Coast Highly Migratory Species Fisheries display the vessel's official number. The numbers must be of a specific size and format and located at specified locations. The display of the identifying number aids in fishery law enforcement.

II. Method of Collection

The vessels' official numbers are displayed on the vessels. No information is submitted.

III. Data

OMB Control Number: 0648–0361.

Form Number: None.

Type of Review: Regular submission (renewal of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 1,500.

Estimated Total Annual Cost to Public: $20,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 2, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–5066 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Large Pelagic Fishing Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 6, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Ronald J. Salz, (301) 713–2328 or *ron.salz@noaa.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Large Pelagic Fishing Survey consists of dockside and telephone surveys of recreational anglers for large pelagic fish (tunas, sharks, and billfish) in the Atlantic Ocean. The survey provides the National Marine Fisheries Service (NMFS) with information to monitor catch of bluefin tuna, marlin and other federally-managed species. Catch monitoring in these fisheries and collection of catch and effort statistics for all pelagic fish is required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. The information collected is essential for the United States (U.S.) to meet its reporting obligations to the International Commission for the Conservation of Atlantic Tuna.

II. Method of Collection

Dockside and telephone interviews are used. In lieu of telephone interviews, respondents may also provide information via faxed logsheets or online via a Web tool.

III. Data

OMB Control Number: 0648–0380.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 18,000.

Estimated Time per Response: 8 minutes for a telephone interview; 5 minutes for a dockside interview; 1½ minutes to respond to a follow-up validation call for dockside interviews; 1 minute for a biological sampling of catch; 28 minutes for a headboat effort and catch survey; 6 minutes for NC winter bluefin tuna dockside interview.

Estimated Total Annual Burden Hours: 4,894.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 2, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–5033 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA266

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene scoping meetings on a proposed amendment addressing crew size limits and earned income requirements.

DATES: The scoping meetings will be held on March 22, 2011 through April 5, 2011 at eight locations throughout the Gulf of Mexico. The scoping meetings will begin at 6 p.m. and will conclude no later than 9 p.m. For specific dates *see* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The scoping meetings will be held in the following locations: St. Petersburg, Key West and Panama City, FL; Kenner, LA; Gulfport, MS; Mobile, AL; Corpus Christi and Galveston, TX.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630 x233.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council has scheduled scoping meetings on a proposed amendment addressing crew size and earned income requirements. The amendment will address crew size regulations for dually permitted vessels, *i.e.,* vessels with a charter for-hire permit and a commercial reef fish permit. In addition, the amendment will consider a temporary suspension of income qualification requirements for the renewal of commercial reef fish permits and evaluate modifications to these requirements. The amendment will also consider the elimination of income qualification requirements.

The eight scoping meetings will begin at 6 p.m. and conclude at the end of

public testimony or no later than 9 p.m. at the following locations:

- Tuesday, March 22, 2011, Hilton St. Petersburg Carillon Parkway, 950 Lake Carillon Drive, St. Petersburg, FL, telephone: (727) 540–0050;
- Wednesday, March 23, 2011, Harvey Government Center, 1200 Truman Ave., Key West, FL, telephone: (305) 295–5000;
- Monday, March 28, 2011, Hilton Garden Inn, 4535 Williams Blvd., Kenner, LA, telephone: (504) 712–0504
- Tuesday, March 29, 2011, Hilton Garden Inn, 14108 Airport Rd, Gulfport, MS 39503, telephone: (228) 863–4996;
- Wednesday, March 30, 2011, Renaissance Riverview Plaza, 64 S. Water St., Mobile, AL 36602, telephone: (251) 438–4000;
- Thursday, March 31, 2011, Royal American Beach Getaways, 9400 S. Thomas Drive, Panama City Beach, FL 32408, telephone: (850) 230–4681;
- Monday, April 4, 2011, Holiday Inn Emerald Beach, 1002 S. Shoreline Blvd., Corpus Christi, TX, telephone: (361) 883–5731;
- Tuesday, April 5, 2011, Hilton, 5400 Seawall Blvd., Galveston, TX 77551, telephone: (409) 744–1757.

Copies of the scoping document can be obtained by calling (813) 348–1630.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: March 2, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–5025 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA268

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Sea Turtle Advisory Committee (STAC) in Honolulu, HI.

DATES: The STAC meeting will be held on Wednesday, March 23, 2011, from 8:30 a.m. to 5:30 p.m. and Thursday, March 24, 2011, from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Council Office Conference Room, 1164 Bishop Street, Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The STAC will review the Council's 2010 sea turtle conservation projects and other relevant activities and may produce recommendations for future program direction.

Agenda

8:30 a.m., Wednesday, March 23, 2011

1. Introduction.
2. Approval of the Agenda.
3. Review of Recommendations from the 6th STAC Meeting.
4. Overview of 2010–11 Council Sea Turtle Program.
5. Update of Sea Turtle Interactions in Hawaii-based Fisheries.
6. Review of 2010 Sea Turtle Projects.

8:30 a.m., Thursday, March 24, 2011

7. Review of 2010 Sea Turtle Projects (Continued).
8. Overview of Agency Activities.
9. Other Projects and Issues of Interest.
10. Recommendations from the STAC.
11. Next Meeting and Meeting Wrap-up.

The order in which agenda items are addressed may change. The Committee will meet as late as necessary to complete scheduled business.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: March 2, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–5027 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA267

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Standing, Special Mackerel and Special Reef Fish Scientific and Statistical Committees.

DATES: The meeting will convene at 1 pm on Tuesday, March 22, 2011 and conclude by noon on Friday, March 25, 2011.

ADDRESSES: The meeting will be held at the Astor Crowne Plaza Hotel, 739 Canal Street, New Orleans, LA 70130; telephone: (504) 962–0500.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Standing and Special Mackerel SSC will meet jointly on Tuesday, March 22, 2011 to review the Council's preferred alternative for an acceptable biological catch (ABC) control rule, and then to review available biological information and recommend an overfishing limit (OFL) and ABC for Gulf group king mackerel, Gulf group Spanish mackerel and cobia based on the ABC control rule. The remainder of the meeting will be a joint meeting of the Standing and Special Reef Fish SSC. The Standing and Special Reef Fish SSC will review an update assessment for greater amberjack and recommend an OFL and ABC based on the assessment and the ABC control rule. The SSC will also reconsider its previous recommendation for an ABC for red grouper in light of new analyses that was reviewed by the SSC in January.

The SSC will also recommend OFL and ABC for several data-poor stocks using the ABC control rule, including scamp, yellowedge grouper, yellowtail snapper, hogfish, golden tilefish, mid-water snapper complex (blackfin snapper, silk snapper, Queen snapper, and Wenchman), deep-water grouper

complex (warsaw grouper, snowy grouper, misty grouper, and speckled hind), and will reconsider previous recommendations made using an earlier draft of the ABC control rule for lane snapper, tilefish complex (blueline tilefish, anchor tilefish, blackline tilefish, and goldface tilefish), and the amberjacks complex (Almaco jack, banded rudderfish, and lesser amberjack). The SSC will also review potential criteria for removal of selected species from the Reef Fish Fishery Management Plan. The above actions are to assist the Council in preparing a generic amendment to set annual catch limits and accountability measures for stocks under its management. The SSC will also review its previous comments on proposed revisions to the SEDAR stock assessment process and may submit those comments to the SEDAR Steering Committee. The SSC will also review and may recommend changes to the schedule of upcoming SEDAR stock assessments. Finally, the SSC will review proposed dates for scheduling SSC meetings for the remainder of 2011.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: March 2, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–5026 Filed 3–4–11; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 17 March 2011, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by e-mailing *staff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: February 28, 2011 in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2011–4915 Filed 3–4–11; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Final Environmental Impact Statement/Overseas Environmental Impact Statement for Gulf of Mexico Range Complex

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy), after carefully weighing the operational and environmental consequences of the proposed action, announces its decision to conduct Navy Atlantic Fleet training; research, development, testing, and evaluation (RDT&E) activities; and associated range capabilities enhancements in the Corpus Christi, New Orleans, Pensacola, and Panama City Operating Areas (OPAREAs) and associated airspace, land and overland components, hereafter referred to as the Gulf of Mexico (GOMEX) Range Complex. Title 10, United States Code (U.S.C.) Part 5062 directs the Chief of Naval Operations (CNO) to train all naval forces for combat. The CNO meets that direction, in part, by conducting at-sea training exercises and ensuring naval forces have access to ranges, OPAREAs and airspace where the Navy can develop and maintain skills for wartime missions and conduct RDT&E of naval weapons systems. The proposed action will be accomplished as set forth in Alternative 2, described in the Final Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS) as the Preferred Alternative. The purpose for the proposed action is to: (1) Achieve and maintain Fleet readiness using the GOMEX Range Complex to support and conduct current, emerging, and future training and RDT&E; (2) Expand warfare missions supported by the GOMEX Range Complex; and (3) Upgrade and modernize existing range capabilities to enhance and sustain Navy training and RDT&E. The need for the proposed action is to provide range capabilities for training and equipping combat-capable naval forces ready to deploy worldwide.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) has been distributed to all individuals who requested a copy of the Final EIS/OEIS and to agencies and organizations that received a copy of the Final EIS/OEIS. The complete text of the ROD is available for public viewing on the project Web site at *http://www.gomexrangecomplexeis.com/,* along with copies of the Final EIS/OEIS and supporting documents. Single copies of the ROD will be made available upon request by contacting: Ms. Nora Gluch, Naval Facilities Engineering Command, Atlantic, 6506 Hampton Boulevard, Norfolk, Virginia 23508–1278; telephone: 757–322–4769.

Dated: March 1, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–5055 Filed 3–4–11; 8:45 am]

BILLING CODE 3810–FF–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 6, 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: March 1, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: William D. Ford Federal Direct Loan (Direct Loan) Program: Application for Automatic Withdrawal of Payments.

OMB Control Number: 1845–0040.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 706,200.

Total Estimated Number of Annual Burden Hours: 23,516.

Abstract: The Application for Automatic Withdrawal of Payments serves as the means by which a Direct Loan borrower requests and authorizes the automatic debiting of monthly student loan payments from the borrower's checking or savings account. The application collects the necessary bank account information that allows the U.S. Department of Education to debit the borrower's loan payments. Borrowers who enroll in automatic payment withdrawal receive a repayment incentive in the form of a 0.25% reduction in the interest rate on their Direct Loans during periods when payments are made by this method. Borrowers who do not wish to enroll in automatic debiting of all monthly payments may provide bank account information that allows them to authorize electronic debiting of individual monthly loan payments.

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 4530. 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. 2011–5072 Filed 3–4–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Technology and Media Services for Individuals With Disabilities—Steppingstones of Technology Innovation for Children With Disabilities; Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Steppingstones of Technology Innovation for Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327A.

Note: This notice includes one absolute priority with two phases, and funding information for each phase of the competition, and two competitive preference priorities within the absolute priority.

Dates:

Applications Available: March 7, 2011.

Deadline for Transmittal of Applications: See the chart in the *Award Information* section of this notice (Chart).

Deadline for Intergovernmental Review: See Chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Technology and Media Services for Individuals with Disabilities program are to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities; and (3) provide support for captioning and video description that are appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2011 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals with Disabilities—Steppingstones of Technology Innovation for Children with Disabilities

Background: The Department has made Steppingstones of Technology

Innovation for Children with Disabilities awards for several years under the Technology and Media Services for Individuals with Disabilities program. Awards are made in two phases: (1) Development and (2) research on effectiveness. Abstracts of projects funded under these two phases can be found at *http://publicddb.tadnet.org/.*

Priority: The Steppingstones of Technology Innovation for Children with Disabilities absolute priority requires grantees to develop, implement, and evaluate innovative technology approaches designed to improve results for children with disabilities. Phase 1 projects must develop, refine, and test the feasibility of specific technology-based approaches. Phase 2 projects must subject technology-based approaches to rigorous field-based research to determine their effectiveness.

To be considered for funding under the Steppingstones of Technology Innovation for Children with Disabilities absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority. The application, programmatic, and administrative requirements are as follows:

(a) In the application, an applicant must—

(1) Describe a technology-based approach for use in (a) early intervention programs, (b) response-to-intervention (RTI) assessment techniques, or (c) preschool, elementary school, middle school, or high school educational programs that is designed to improve results for children with disabilities. The technology-based approach must be an innovative combination of new technology and additional materials and methodologies that enable the technology to improve results for children with disabilities;

(2) Present a justification, based on scientifically rigorous research or theory, that demonstrates the potential effectiveness of the technology-based approach described pursuant to paragraph (a)(1) of this priority for improving results for children with disabilities. The approach must have the potential to improve child outcomes, not just parent or provider outcomes. Child outcomes may include improved academic or pre-academic skills, improved behavioral or social functioning, and improved functional performance, provided that valid and reliable measurement instruments are employed to assess the outcomes. Technology-based approaches intended for use by providers or parents may not be funded under this priority unless child-level benefits are clearly demonstrated. Technology-based approaches for professional development will not be funded under this priority;

(3) Provide a detailed plan for conducting work in one of the following two phases:

(i) *Phase 1—Development:* Projects funded under Phase 1 must develop and refine a technology-based approach, and test its feasibility for use with children with disabilities. Activities under Phase 1 of the priority may include development, adaptation, and refinement of technology, materials, or methodologies. Activities under Phase 1 of the priority must include a formative evaluation of the technology-based approach's usability and feasibility for use with children with disabilities. Each project funded under Phase 1 must be designed to develop, as its primary product, a promising technology-based approach for which it demonstrates evidence of its usability and feasibility for improving results for children with disabilities.

(ii) *Phase 2—Research on Effectiveness:* Projects funded under Phase 2 must select a promising technology-based approach that has been developed and tested in a manner consistent with the criteria for activities funded under Phase 1, and subject the approach to rigorous field-based research to determine its effectiveness in educational or early intervention settings. Approaches studied under Phase 2 may have been developed with previous funding under Phase 1 of this priority or with funding from other sources. Phase 2 of this priority is primarily intended to produce sound research-based evidence demonstrating that the technology-based approach can improve educational or early intervention results for children with disabilities in a defined range of real world contexts.

Projects funded under Phase 2 of this priority must conduct research that poses a causal question and must seek to answer that question through randomized assignment to treatment and comparison conditions, unless a strong justification is made for why a randomized trial is not possible. If a randomized trial is not possible, the applicant must employ alternatives that substantially minimize selection bias or allow the selection bias to be modeled. These alternatives include appropriately structured regression-discontinuity designs and natural experiments in which naturally occurring circumstances or institutions (perhaps unintentionally) divide people into treatment and comparison groups in a manner akin to purposeful random assignment. In their applications, applicants proposing to use an alternative system must (1) make a compelling case that randomization is not possible, and (2) describe in detail how the procedures will result in substantially minimizing the effects of selection bias on estimates of effect size. Choice of randomizing unit or units (*e.g.,* students, classrooms, schools) must be grounded in a theoretical framework. Observational, survey, or qualitative methodologies may complement experimental methodologies to assist in the identification of factors that may explain the effectiveness or ineffectiveness of the technology-based approach being evaluated. Applicants must propose research designs that permit the identification and assessment of factors that may have an impact on the fidelity of implementation. Mediating and moderating variables that are both measured in the practice or model condition and are likely to affect outcomes in the comparison condition must be measured in the comparison condition (*e.g.,* student time-on-task, teacher experience, or time in position).

Projects funded under Phase 2 of this priority must conduct comprehensive research in order to provide convincing evidence of the effectiveness or ineffectiveness of the technology-based approach under study, at least within a defined range of settings. Applicants must provide documentation that available sample sizes, methodologies, and treatment effects are likely to result in conclusive findings regarding the effectiveness of the technology-based approach;

(4) Provide a plan for forming collaborative relationships with vendors, other dissemination or marketing resources, or both to ensure that the technology-based approach can be made widely available if sufficient evidence of effectiveness is obtained. Applicants should document the availability and willingness of dissemination or marketing resources to participate. Applicants are encouraged to plan these collaborative relationships early in their projects, even in Phase 1 (if applicable), but should refrain from widespread dissemination of the technology-based approach to practitioners until evidence of its effectiveness is obtained in Phase 2; and

(5) Budget for the project director to attend an annual three-day Project Directors' meeting in Washington, DC, and another annual two-day trip to

Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority to share information, and to discuss findings and methods of dissemination.

(b) The project also must conduct the following activities:

(1) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

(2) If the project produces instructional materials for dissemination, produce them in accessible formats (*e.g.,* with captioning, with video description) complying with the National Instructional Materials Accessibility Standard (NIMAS) when appropriate.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that meet one or more of the following priorities. For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Competitive Preference Priority 1: Under 34 CFR 75.105(c)(2)(i) we award an additional 3 points to an application that meets this priority.

This priority is:

Applicants with projects that are designed to improve school readiness and success by using technology-based approaches for children with disabilities from birth through third grade and focus on one or more of the following priority areas: (a) Physical well-being and motor development; (b) social-emotional development; (c) language and literacy development; (d) cognition and general knowledge, including early numeracy and early scientific development; and (e) approaches toward learning.

Competitive Preference Priority 2: Under 34 CFR 75.105(c)(2)(i) we award an additional 3 points to an application that meets this priority.

This priority is:

Applicants with projects that are designed to focus on technology-based approaches for instruction in science, mathematics, or both for children with disabilities.

Note: Three is the maximum amount of points an applicant can receive for meeting one or both of the competitive preference priorities. Thus, even if an applicant meets both priorities, it will only earn a total of 3 points. Applicants must include in the project abstract a statement indicating which competitive preference priorities they have addressed.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $41,223,000 for awards for the Technology and Media Services for Individuals with Disabilities program for FY 2011, of which we intend to use an estimated $2,400,000 for the Steppingstones of Technology Innovation for Children with Disabilities competition. Please refer to the "Estimated Range of Awards" column in the Chart for the estimated dollar amounts for the two phases of this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: See Chart.

Estimated Average Size of Awards: See Chart.

Maximum Award: Phase 1: $200,000, per year and Phase 2: $300,000, per year. We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: See Chart.

Project Period: Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2 will be funded for up to 36 months. We will reject any application that proposes a project period exceeding 24 months for Phase 1 or 36 months for Phase 2.

STEPPINGSTONES OF TECHNOLOGY INNOVATION FOR CHILDREN WITH DISABILITIES

[Application Notice for Fiscal Year 2011]

CFDA No. and Name	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.327A—Steppingstones of Technology Innovation for Children With Disabilities:						
Phase 1—Development	April 21, 2011	June 20, 2011	$1,200,000	$100,000–200,000	$200,000	6
Phase 2—Research on Effectiveness	April 21, 2011	June 20, 2011	1,200,000	200,000–300,000	300,000	4

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. *Fax:* (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327A.

To obtain a copy from the program office, contact the person listed under *For Further Information Contact* in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 7, 2011.

Deadline for Transmittal of Applications: See Chart.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *FOR FURTHER INFORMATION CONTACT* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: See Chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Steppingstones of Technology Innovation for Children with

Disabilities competition, CFDA number 84.327A, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Steppingstones of Technology Innovation for Children with Disabilities competition, CFDA number 84.327A at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.327, not 84.327A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.327A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.327A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:*

In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to improving outcomes of children with disabilities, and contribute to improving outcomes for children with disabilities. We will collect data on these measures from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application,

including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Terry Jackson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4081, Potomac Center Plaza (PCP), Washington, DC 20202–2550. *Telephone:* (202) 245–6039.

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 2, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–5081 Filed 3–4–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada; Correction

AGENCY: Department of Energy.

ACTION: Notice of open meeting: Correction

SUMMARY: On February 24, 2011, the Department of Energy (DOE) published a notice announcing a meeting of the Environmental Management Site-Specific Advisory Board, Nevada to be held on March 9, 2011 (76 FR 10343). This document makes several corrections to that notice.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or E-mail: *ntscab@nv.doe.gov.*

Corrections

In the **Federal Register** of February 24, 2011, in FR Doc. 2011–4148, on page 10343, please make the following corrections:

Under **DATES**, third column, first paragraph, the meeting date has been changed. The new date is March 16, 2011.

Under **ADDRESSES**, third column, second paragraph, the meeting address has been changed. The new address is the Sun City Aliante Community Center, 7394 Aliante Parkway, North Las Vegas, Nevada 89084.

Under *Tentative Agenda,* third column, there has been an additional topic added. The additional topic is DOE Draft Environmental Impact Statement (EIS) for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste (Draft EIS, DOE/EIS–0375D) Update.

Issued at Washington, DC, on March 1, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–5050 Filed 3–4–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

March 01, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1833–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc. submits tariff filing per 154.204: Fuel Filing—Eff. April 1, 2011 to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5047.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1834–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: Panhandle Eastern Pipe Line Company, LP submits tariff filing per 154.204: Fuel Filing 3–1–2011 to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5054.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1835–000.
Applicants: Trunkline Gas Company, LLC.
Description: Trunkline Gas Company, LLC submits tariff filing per 154.204: Fuel Filing 3–1–2011 to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5058.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1836–000.
Applicants: Southwest Gas Storage Company.
Description: Southwest Gas Storage Company submits tariff filing per 154.204: Fuel Filing 3–1–2011 to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5059.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1837–000.
Applicants: Williston Basin Interstate Pipeline Company.
Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.204: NSP Restatement to be effective 3/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5063.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1838–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Oneok to BG Energy Negotiated Rate Cap Reliability Filing to be effective 3/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5066.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1839–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: EOG Resources Amendment to Negotiated Rate Agreement to be effective 3/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5067.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1840–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: EOG Resources Amendment to Negotiated Rate Agreement Filing #2 to be effective 3/1/2011.

Filed Date: 03/01/2011.

Accession Number: 20110301–5068.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1841–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: EnCana Marketing Amendment to Negotiated Rate Agreement Filing to be effective 2/24/2011.

Filed Date: 03/01/2011.

Accession Number: 20110301–5069.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1842–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Antero to Tenaska Cap Reliability Negotiated Rate 3–1–11 Filing to be effective 3/1/2011.

Filed Date: 03/01/2011.

Accession Number: 20110301–5083.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1843–000.

Applicants: KO Transmission Company.

Description: KO Transmission Company submits tariff filing per 154.403: Transportation Retainage Adjustment Change Filing to be effective 4/1/2011.

Filed Date: 03/01/2011.

Accession Number: 20110301–5089.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1844–000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits tariff filing per 154.204: Annual FL&U Percentage Adjustment to be effective 4/1/2011.

Filed Date: 03/01/2011.

Accession Number: 20110301–5091.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: CP11–74–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: American Midstream LLC. Transcontinental Gas Pipe Line Company, LLC and American Midstream LLC, submit a joint application to abandon certificated transportation and exchange services.

Filed Date: 02/01/2011.

Accession Number: 20110201–5193.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 8, 2011 .

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5020 Filed 3–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

March 1, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1813–000.

Applicants: Trunkline Gas Company, LLC

Description: Trunkline Gas Company, LLC submits tariff filing per 154.204: Negotiated Rates Filing-6 to be effective 3/1/2011.

Filed Date: 02/28/2011.

Accession Number: 20110228–5093.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1814–000.

Applicants: High Island Offshore System, L.L.C.

Description: High Island Offshore System, L.L.C. submits tariff filing per 154.403(d)(2): 2011 Annual Fuel Filing to be effective 4/1/2011.

Filed Date: 02/28/2011.

Accession Number: 20110228–5097.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1815–000.

Applicants: Cheniere Creole Trail Pipeline, L.P.

Description: Cheniere Creole Trail Pipeline, L.P. submits tariff filing per 154.402: Semi Annual Charge Adjustment to be effective 4/1/2011.

Filed Date: 02/28/2011.

Accession Number: 20110228–5104.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1816–000.

Applicants: PostRock KPC Pipeline, LLC.

Description: PostRock KPC Pipeline, LLC submits tariff filing per 154.203: Order No. 587–U Compliance to be effective 7/1/2011.

Filed Date: 02/28/2011.

Accession Number: 20110228–5106.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1817–000.

Applicants: PostRock KPC Pipeline, LLC.

Description: PostRock KPC Pipeline, LLC submits tariff filing per 154.403(d)(2): Fuel Reimbursement Adjustment to be effective 4/1/2011.

Filed Date: 02/28/2011.

Accession Number: 20110228–5108.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1818–000.

Applicants: Crossroads Pipeline Company.

Description: Crossroads Pipeline Company submits tariff filing per 154.204: TRA 2011 to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5121.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1819–000.
Applicants: Dominion Cove Point LNG, LP.
Description: Dominion Cove Point LNG, LP submits tariff filing per 154.204: DCP—2011 Annual EPCA to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5151.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1820–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits tariff filing per 154.204: TRA 2011 to be effective 5/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5152.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1821–000.
Applicants: Dominion Cove Point LNG, LP.
Description: Dominion Cove Point LNG, LP submits tariff filing per 154.204: DCP—2011 Annual Fuel Retainage to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5153.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1822–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: TCRA 2011 to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5169.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1824–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Brazos Electric's Non-Conforming Agreement Filing to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5193.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1825–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: EPCA 2011 to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5203.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1826–000.
Applicants: Viking Gas Transmission Company.
Description: Viking Gas Transmission Company submits tariff filing per 154.204: LMCRA to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5224.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1827–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: RAM 2011 to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5225.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1828–000.
Applicants: Central Kentucky Transmission Company.
Description: Central Kentucky Transmission Company submits tariff filing per 154.204: RAM 2011 to be effective 4/1/2011.
Filed Date: 02/28/2011.
Accession Number: 20110228–5250.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1829–000.
Applicants: Williston Basin Interstate Pipeline Company.
Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.204: Annual Fuel and Electric Power Reimbursement to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5041.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1830–000.
Applicants: Williston Basin Interstate Pipeline Company.
Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.204: Non-Conforming Service Agreement to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5042.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1831–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: MarkWest Pioneer, L.L.C. submits tariff filing per 154.403(d) (2): Quarterly Fuel Adjustment Filing to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5043.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1832–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.403: Annual Electric Power Tracker to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5045.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5021 Filed 3–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–59–000.
Applicants: Alta Wind VI, LLC.
Description: Self-Certification of Exempt Wholesale Generator Status of Alta Wind VI, LLC.
Filed Date: 02/24/2011.
Accession Number: 20110224–5089.
Comment Date: 5 p.m. Eastern Time on Thursday, March 17, 2011.

Docket Numbers: EG11–60–000.
Applicants: Alta Wind VIII, LLC.
Description: Self-Certification of Exempt Wholesale Generator Status of Alta Wind VIII, LLC.
Filed Date: 02/24/2011.
Accession Number: 20110224–5090.
Comment Date: 5 p.m. Eastern Time on Thursday, March 17, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1096–001; ER10–2160–001; ER10–2161–001; ER10–2162–001; ER10–2163–001.
Applicants: NAEA Energy Massachusetts, LLC, NAEA Ocean Peaking Power, LLC, NAEA Rock Springs, LLC, NAEA Lakewood Cogeneration, LP, NAEA Newington Energy, LLC.
Description: Supplemental Information of NAEA Companies.
Filed Date: 02/24/2011.
Accession Number: 20110224–5099.
Comment Date: 5 p.m. Eastern Time on Thursday, March 17, 2011.

Docket Numbers: ER10–1515–001; ER10–1516–001; ER10–64–004.
Applicants: CPV Liberty, LLC; CPV Milford, LLC; CPV Keenan II Renewable Energy Company, LLC.
Description: Notification of Change in Status of CPV Keenan II Renewable Energy Company, LLC, *et al.*
Filed Date: 02/23/2011.
Accession Number: 20110223–5187.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER10–2607–002.
Applicants: Old Dominion Electric Cooperative.
Description: Old Dominion Electric Cooperative submits tariff filing per 35: Rate Formula Compliance Filing to be effective 1/1/2011.
Filed Date: 01/27/2011.
Accession Number: 20110127–5169.
Comment Date: 5 p.m. Eastern Time on Monday, March 7, 2011.

Docket Numbers: ER11–1834–001.
Applicants: Kentucky Power Company.
Description: Kentucky Power Company submits tariff filing per 35: 20110223 KPCo MBR Concurrence Compliance to be effective 10/8/2010.
Filed Date: 02/23/2011.
Accession Number: 20110223–5149.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–1835–001.
Applicants: Kingsport Power Company.
Description: Kingsport Power Company submits tariff filing per 35: 20110223 KGP MBR Concurrence Compliance to be effective 10/8/2010.
Filed Date: 02/23/2011.
Accession Number: 20110223–5150.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–1837–001.
Applicants: Ohio Power Company.
Description: Ohio Power Company submits tariff filing per 35: 20110223 OPCo MBR Concurrence Compliance to be effective 10/8/2010.
Filed Date: 02/23/2011.
Accession Number: 20110223–5154.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–1838–001.
Applicants: Wheeling Power Company.
Description: Wheeling Power Company submits tariff filing per 35: 20110223 WPCo MBR Concurrence Compliance to be effective 10/8/2010.
Filed Date: 02/23/2011.
Accession Number: 20110223–5167.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2598–003.
Applicants: Gateway Energy Services Corporation.
Description: Gateway Energy Services Corporation submits tariff filing per 35: Second Supplement to Tariff Revision Regarding Seller Category to be effective 3/4/2011.
Filed Date: 02/24/2011.
Accession Number: 20110224–5107.
Comment Date: 5 p.m. Eastern Time on Thursday, March 17, 2011.

Docket Numbers: ER11–2765–000.
Applicants: Elk Wind Energy LLC.
Description: Supplemental Information of Elk Wind Energy LLC.
Filed Date: 02/23/2011.
Accession Number: 20110223–5036.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2942–000.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Allegheny Energy Supply Company, LLC submits request for authorization to make wholesale power sales to its affiliate.
Filed Date: 02/23/2011.
Accession Number: 20110223–0207.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2944–000.
Applicants: Pilot Power Group, Inc.
Description: Pilot Power Group, Inc. submits tariff filing per 35.15: PPG Tariff to be effective 1/17/2011.
Filed Date: 02/23/2011.
Accession Number: 20110223–5173.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Docket Numbers: ER11–2946–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): LGIA Among NYISO, National Grid and Roaring Brook to be effective 2/11/2011.
Filed Date: 02/24/2011.
Accession Number: 20110224–5117.
Comment Date: 5 p.m. Eastern Time on Thursday, March 17, 2011.

Docket Numbers: ER11–2947–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Revisions to the RAA Schedule 17—Parties to the RAA to be effective 2/14/2011.
Filed Date: 02/24/2011.
Accession Number: 20110224–5139.
Comment Date: 5 p.m. Eastern Time on Thursday, March 17, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 24, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5023 Filed 3–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF85–324–007.
Applicants: Mt. Poso Cogeneration Company, LLC.
Description: Notice of Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility of Mt. Poso Cogeneration Company, LLC.
Filed Date: 02/15/2011.
Accession Number: 20110215–5133.
Comment Date: None Applicable.

Docket Numbers: QF10–485–001.
Applicants: Alabama River Cellulose LLC.
Description: Notice of Self Re-certification Filed on Behalf of Alabama River Cellulose LLC.
Filed Date: 08/12/2010.
Accession Number: 20100812–5051.
Comment Date: None Applicable.

Docket Numbers: QF08–528–001.
Applicants: Alpine Energy, LLC.
Description: Notice of Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility for Alpine Energy, LLC, Alpine Landfill Gas Project.
Filed Date: 06/17/2010.
Accession Number: 20100617–5009.
Comment Date: None Applicable.

Docket Numbers: QF10–533–000.
Applicants: Rain CII Carbon LLC.
Description: Notice of Certification of Qualifying Facility Status for a Small Power Production Facility of Rain CII Carbon LLC.
Filed Date: 06/22/2010.
Accession Number: 20100622–4007.
Comment Date: None Applicable.

Docket Numbers: QF10–559–000.
Applicants: PowerSecure, Inc.
Description: Self-Certification of PowerSecure Inc. at Washington, NC Walmart.
Filed Date: 07/02/2010.
Accession Number: 20100702–5029.
Comment Date: None Applicable.

Docket Numbers: QF10–560–000.
Applicants: PowerSecure, Inc.
Description: Self-Certification of PowerSecure Inc. at Laurinburg, NC Walmart.
Filed Date: 07/02/2010.
Accession Number: 20100702–5032.
Comment Date: None Applicable.

Docket Numbers: QF10–561–000.
Applicants: PowerSecure, Inc.
Description: Self-Certification of PowerSecure Inc. at Wilson, NC Walmart.
Filed Date: 07/02/2010.
Accession Number: 20100702–5035.
Comment Date: None Applicable.

Docket Numbers: QF10–562–000.
Applicants: PowerSecure, Inc.
Description: Self-Certification of PowerSecure Inc. at Southport, NC Walmart.
Filed Date: 07/02/2010.
Accession Number: 20100702–5035.
Comment Date: None Applicable.

Docket Numbers: QF10–563–000.
Applicants: PowerSecure, Inc.
Description: Self-Certification of PowerSecure Inc. at Tarboro, NC Walmart.
Filed Date: 07/02/2010.
Accession Number: 20100702–5055.
Comment Date: None Applicable.

Docket Numbers: QF10–568–000.
Applicants: B'Nai B'Rith Housing New England—Covenant House
Description: Form 556 of B'Nai B'Rith Housing New England—Covenant House.
Filed Date: 07/08/10; 08/17/2010.
Accession Number: 20100708–5031; 20100817–5037.
Comment Date: None Applicable.

Docket Numbers: QF10–569–000.
Applicants: Cambridge Residence Inn.
Description: Form 556 of Cambridge Residence Inn.
Filed Date: 07/08/10; 08/17/2010.
Accession Number: 20100708–5032; 20100817–5036.
Comment Date: None Applicable.

Docket Numbers: QF10–584–000.
Applicants: Town of Smithfield.
Description: Self-Certification of Town of Smithfield, NC.
Filed Date: 07/21/2010.
Accession Number: 20100721–5037.
Comment Date: None Applicable.

Docket Numbers: QF10–614–000.
Applicants: Sysco Raleigh, LLC.
Description: Form 556 of Sysco Raleigh, LLC.
Filed Date: 09/02/2010.
Accession Number: 20100902–5126.
Comment Date: None Applicable.

Docket Numbers: QF10–627–000.
Applicants: Kennecott Utah Cooper LLC.
Description: Form 556 of Kennecott Utah Copper LLC QF Self Certification.
Filed Date: 08/17/2010.
Accession Number: 20100817–5059.
Comment Date: None Applicable.

Docket Numbers: QF10–630–000.
Applicants: Heritage Hospital.
Description: Amending initial self-certification.
Filed Date: 10/27/2010.
Accession Number: 20101027–5124.
Comment Date: None Applicable.

Docket Numbers: QF10–642–000.
Applicants: Marlin Daufeldt.
Description: Form 556 of Marlin Daufeldt, LLC.
Filed Date: 08/31/2010.
Accession Number: 20100831–5234.
Comment Date: None Applicable.

Docket Numbers: QF10–667–000.
Applicants: Town of Tarboro.
Description: Notice of Self-Certification of Qualifying Facility Status for a Small Power Production Facility by PowerSecure Inc. for Town of Tarboro, NC.
Filed Date: 09/15/2010.
Accession Number: 20100915–5209.
Comment Date: None Applicable.

Docket Numbers: QF11–27–000.

Applicants: California Dairies, Inc.
Description: Form 556 of California Dairies, Inc.
Filed Date: 11/02/2010.
Accession Number: 20101102–5157.
Comment Date: None Applicable.

Docket Numbers: QF11–28–000.
Applicants: California Dairies, Inc.
Description: Form 556 of California Dairies, Inc.
Filed Date: 11/02/2010.
Accession Number: 20101102–5158.
Comment Date: None Applicable.

Docket Numbers: QF11–29–000.
Applicants: California Dairies, Inc.
Description: Form 556 of California Dairies, Inc.
Filed Date: 11/04/2010.
Accession Number: 20101104–5067.
Comment Date: None Applicable.

Docket Numbers: QF11–87–000.
Applicants: NRG Energy Center Princeton LLC.
Description: Report 556 of NRG Energy Center Princeton LLC.
Filed Date: 12/20/2010.
Accession Number: 20101220–5120.
Comment Date: None Applicable.

Docket Numbers: QF11–104–000.
Applicants: Lowe's Food Stores, Inc.
Description: Form 556 of Lowe's Food Stores, Inc.
Filed Date: 01/11/2011.
Accession Number: 20110111–5271.
Comment Date: None Applicable.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 24, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5022 Filed 3–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Cumberland System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of proposed rates, public forum, and opportunities for public review and comment.

SUMMARY: Southeastern Power Administration (Southeastern) proposes to revise existing schedules of rates and charges applicable to the sale of power from the Cumberland System of Projects effective for a 2-year period, October 1, 2011, through September 30, 2013. Interested persons may review the rates and supporting studies and submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before June 6, 2011. A public information and comment forum will be held at 10 a.m., May 3, 2011. Persons desiring to attend the forum should notify Southeastern at least seven (7) days before the forum is scheduled. Persons desiring to speak at the forum should notify Southeastern at least three (3) days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits. If Southeastern has not been notified by close of business on April 26, 2011, that at least one person intends to be present at the forum, the forum will be canceled with no further notice.

ADDRESSES: The forum will be held at the Embassy Suites Nashville—at Vanderbilt, 1811 Broadway, Nashville, Tennessee 37203 Phone (615) 320–8899. Written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, GA 30635–6711.

FOR FURTHER INFORMATION CONTACT: J. W. Smith, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800.

SUPPLEMENTARY INFORMATION: On May 6, 2009, the Federal Energy Regulatory Commission (FERC) confirmed and approved on a final basis, Wholesale Power Rate Schedules CBR–1–G, CSI–1–G, CEK–1–G, CM–1–G, CC–1–H, CK–1–G, and CTV–1–G applicable to Cumberland System of Projects power for a period ending September 30, 2013 (127 FERC 62,115). On May 17, 2010 Rate Schedule CTVI–1 was approved by the Administrator, Southeastern Power Administration, for a period ending September 30, 2013.

Discussion: The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the Tennessee Valley Authority (TVA) transmission system. Due to restrictions on the operation of the Wolf Creek Project imposed by the U.S. Army Corps of Engineers as a precaution to prevent failure of the dam, Southeastern is not able to provide peaking capacity to these customers. Southeastern implemented an Interim Operating Plan for the Cumberland System to provide these customers with energy that did not include capacity.

The Corps of Engineers has provided Southeastern with a plan of replacements for the Cumberland System. With escalation, the total cost of these planned replacements is $843,000,000.

Existing rate schedules are predicated upon a July 2008 repayment study and other supporting data contained in FERC docket number EF08–3022–000. The revenue requirement in this study is $50,400,000. An updated repayment study, dated January 2011, shows that rates are not adequate to meet repayment criteria. Energy delivered in the Cumberland System in Fiscal Years 2008, 2009, and 2010 was 73 percent of forecast. As a result, total revenues were about 19 percent less than forecast. In addition, Corps' Operation & Maintenance Expense was about 33 percent higher than forecast.

A revised repayment study demonstrates that a revenue increase to $64,600,000 per year will meet repayment criteria. The increase in the annual revenue requirement is $14,200,000 per year, or about 28 percent.

Southeastern is proposing three rate scenarios per rate schedule. All of the rate alternatives have a revenue requirement of $64,600,000.

The first rate scenario includes the rates necessary to recover costs under the Interim Operating Plan. These rates are based on energy. The rate would be 20.87 mills per kilowatt-hour for all Cumberland energy. The customers would pay a ratable share of the

transmission credit the Administrator of Southeastern Power Administration (Administrator) provides the Tennessee Valley Authority (TVA) as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA. This rate would remain in effect as long as Southeastern is unable to provide capacity due to the Corps' imposed restrictions on the operation of the Wolf Creek Project.

The second rate scenario would recover cost from capacity and energy. The revenue requirement under this alternative would be $64,600,000 per year. This scenario would be in effect once the Corps raises the lake level at the Wolf Creek and Center Hill Projects. When the lake level rises and capacity is available, the capacity would be allocated to the customers.

The third rate scenario is based on the original Cumberland Marketing Policy. All costs are recovered from capacity and excess energy. The rates under this alternative would be as follows:

Cumberland System Rates

Third Scenario—Return to Original Marketing Policy

Inside TVA Preference Customers

Capacity and Base Energy: $3.148 per kW/Month
Additional Energy: 10.864 mills per kWh
Transmission: Pass-through

Outside TVA Preference Customers

(Excluding Customers served through Carolina Power & Light Company or East Kentucky Power Cooperative)

Capacity and Base Energy: $4.614 per kW/Month
Additional Energy: 10.864 mills per kWh

Customers Served through Carolina Power & Light Company

Capacity and Base Energy: $5.252 per kW/Month
Transmission: $1.2959 per kW/Month
(As of 1/1/2011 and provided for illustrative purposes)

East Kentucky Power Cooperative

Capacity: $3.256 per kW/Month
Energy: 10.864 mills per kWh

These rates would go into effect once the Corps lifts the restrictions on the operation of the Wolf Creek and Center Hill Projects and the Interim Operating Plan becomes unnecessary.

The referenced repayment studies are available for examination at 1166 Athens Tech Road, Elberton, Georgia 30635–6711. The Proposed Rate Schedules CBR–1–H, CSI–1–H, CEK–1–H, CM–1–H, CC–1–I, CK–1–H, CTV–1–H, and CTVI–1–A are also available.

Dated: February 28, 2011.

Kenneth E. Legg,

Administrator.

[FR Doc. 2011–5047 Filed 3–4–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–UST–2010–0538; FRL–9276–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Underground Storage Tank: Information Request Letters, Pacific Southwest Region (Region IX) (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 6, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–R09–UST–2010–0538, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *thomas.ladonna@epa.gov,* or by mail to: LaDonna Thomas, Environmental Protection Agency, Mailcode: WST–8, 75 Hawthorne Street, San Francisco, CA 94105–3901, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: LaDonna Thomas, Waste Management Division, WST–8, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105–3901; telephone number: (415) 972–3375; fax number: (415) 947–3530; e-mail address: *thomas.ladonna@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 24, 2010 (75 FR 58374), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–R09-UST–2010–0538, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Docket Facility located at the Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA. A complete public portion of the administrative record is available for review at the Docket Facility upon request. The Docket Facility is open from 9 a.m. to 4 p.m., Monday through Thursday, excluding legal holidays, and is located in a secured building. To review docket materials at the Docket facility, it is recommended that the public make an appointment by calling the Docket Facility at (415) 947–4406 during normal business hours.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Underground Storage Tank: Information Request Letters, Pacific Southwest Region (Region IX) (New).

ICR numbers: EPA ICR No. 2405.01, OMB Control No. 2009–NEW.

ICR Status: This ICR is for a new information collection activity. 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 has already received approval from OMB for its information collection request, entitled "EPA Information Collection Request Number 1360.08, Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures." This approval grants EPA authority to collect information from owners and operators, as specified in 40 CFR part 280, that may otherwise be subject to the Paperwork Reduction Act, including owner and operator requirements to bring a tank into service, pursuant to 40 CFR 280.22, and owner and operator requirements to notify the implementing agency of any decision to permanently close or make a change-in-service at an UST system, pursuant to 40 CFR 280.71. Although OMB has approved this information collection request, EPA, Region 9, is seeking additional approval from OMB to revise and expand the scope of the original information collection request beyond what EPA originally envisioned when it initially sought the ICR.

EPA Region 9's Underground Storage Tanks Program Office (R9 USTPO) is planning to undertake an effort to increase the rate of compliance in Region 9. R9 USTPO has direct implementation responsibilities in Indian country and our data has shown a low rate of compliance. While Indian country is our highest priority because of our direct implementation responsibility, we have also reviewed data that suggest facilities outside Indian country are also of concern. In FY 08, the rate of compliance in Region 9 Indian country was 36% and outside of Indian country the average was 68%. An information request pursuant to RCRA section 9005 directed to UST facility owners and operators in order to determine compliance will help to increase the rate of compliance.

As a result, R9 USTPO would like to send an information request letter in accordance with RCRA Section 9005 and 40 CFR 280.34 annually to approximately 500 UST facilities. This letter will request that the facility owner or operator send to the R9 USTPO the compliance records that they are already required to keep, but have not previously been asked to submit to the Agency. The information request letter authority was codified in 40 CFR 280.34 of the UST regulations and this regulation and other provisions of the UST regulations also contain specific ongoing facility reporting and record keeping obligations. In accordance with 40 CFR 280.34(c), these records should be kept either on-site or must be readily available at an alternative site and, thus, should be easy to locate. The information is routinely reviewed during inspections, but we believe there is suspected non-compliance that warrants additional collection and believe that these requests will encourage owners and operators to maintain regulatory compliance and will allow the R9 USTPO to better ensure compliance with regulatory requirements for those facilities. The R9 USTPO seeks to continue this request for records from facilities indefinitely and would monitor whether our efforts to increase compliance are successful.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Underground storage tank owners and operators within EPA Region 9 (Arizona, California, Hawaii, Nevada, Pacific Islands, 147 Tribes).

Estimated Number of Respondents: 500.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 1,000.

Estimated Total Annual Cost: $29,025, includes $4,025 annualized capital or O&M costs.

Changes in the Estimates: This is a new collection.

Dated: March 1, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–5049 Filed 3–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9276–3]

A Method To Assess Climate-Relevant Decisions: Application in the Chesapeake Bay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of cancellation of peer-review panel workshop.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the cancellation of a March 11, 2011 external peer review meeting of the draft document titled, "A Method to Assess Climate-Relevant Decisions: Application in the Chesapeake Bay" (EPA/600/R–10/096a), announced earlier (76 FR 4345, January 25, 2011). EPA has received the written reviews from the external peer review members as well as public comments received during the public comment period from August 31 to November 1, 2010 (announced in 75 FR 168, August 31, 2010). EPA has concluded that a public peer review meeting is not warranted as the comments from the peer reviewers and the public are not controversial or conflicting and can be readily accommodated. Consistent with EPA practices, we will post all of the peer reviewer's comments and those of the public along with EPA's responses when the final report is released publicly, within the next 120 days.

DATES: March 11, 2011. The peer review panel workshop scheduled to begin at 8:30 a.m. and end at 4 p.m. at the Navy League Building, 2300 Wilson Boulevard, Arlington, VA 22201, has been cancelled.

Dated: February 28, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–5043 Filed 3–4–11; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 10, 2011,

from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- February 10, 2011.

B. Reports

- Frequently Asked Questions on Borrowers Rights—Part II.
- Update on Dodd-Frank Rulemaking Projects.

Dated: March 2, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011–5233 Filed 3–3–11; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 22, 2011.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Bridge Capital Holdings; to engage through its subsidiary, Bridge Asset Management, Inc., both in San Jose, California, in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 2, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–5037 Filed 3–4–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0113; Docket 2011–0079; Sequence 5]

Federal Acquisition Regulation; Information Collection; Acquisition of Helium

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning acquisition of helium.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 6, 2011.

ADDRESSES: Submit comments identified by Information Collection 9000–0113 by any of the following methods:

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

Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0113" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0113". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0113" on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0113.

Instructions: Please submit comments only and cite Information Collection 9000–0113, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Lague, Procurement Analyst, Contract Policy Branch, GSA (202) 694–8149 or *debbie.lague@gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Helium Act (Pub. L. 86–777) (50 U.S.C. 167a, *et seq.*) and the Department of the Interior's implementing regulations (30 CFR parts 601 and 602) require Federal agencies to procure all major helium requirements from the Bureau of Land Management, Department of the Interior.

The FAR requires offerors responding to contract solicitations to provide information as to their forecast of helium required for performance of the contract. Such information will facilitate enforcement of the requirements of the Helium Act and the contractual provisions requiring the use of Government helium by agency contractors, in that it will permit corrective action to be taken if the Bureau of Land Management, after comparing helium sales data against

helium requirement forecasts, discovers apparent serious discrepancies.

The information is used in administration of certain Federal contracts to ensure contractor compliance with contract clauses. Without the information, the required use of Government helium cannot be monitored and enforced effectively.

B. Annual Reporting Burden

Respondents: 26.
Responses per Respondent: 1.
Total Responses: 26.
Hours Per Response: 1.
Total Burden Hours: 26.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 1st Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0113, Acquisition of Helium, in all correspondence.

Dated: February 24, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–4770 Filed 3–4–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Common Formats for Patient Safety Data Collection and Event Reporting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of availability—new Common Format.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety Act (at 42 U.S.C. 299b–23) authorizes the collection of this information in a standardized manner, as explained in the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008: 73 FR 70731–70814. As authorized by the Secretary of HHS, AHRQ coordinates the development of a set of common definitions and reporting formats (Common Formats) that allow healthcare providers to voluntarily collect and submit standardized information regarding patient safety events. The purpose of this notice is to announce the availability of a new beta version of the Common Format for Skilled Nursing Facilities for public review and comment.

DATES: Ongoing public input.

ADDRESSES: The new beta version of the Ski/led Nursing Facilities format (version dated February 2011) and the remaining Common Formats, can be accessed electronically at the following HHS Web site: *http://www.PSO.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Deborah Perfetto, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; ITY (local): (301) 427–1130; E-mail: *PSO@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act and Patient Safety Rule establish a framework by which doctors, hospitals, skilled nursing facilities, and other healthcare providers may voluntarily report information regarding patient safety events and quality of care. Information that is assembled and developed by providers for reporting to PSOs and the information received and analyzed by PSOs—called "patient safety work product"—is privileged and confidential. Patient safety work product is used to identify events, patterns of care, and unsafe conditions that increase risks and hazards to patients. Definitions and other details about PSOs and patient safety work product are included in the Patient Safety Rule.

The Patient Safety Act and Patient Safety Rule require PSOs, to the extent practical and appropriate, to collect patient safety work product from providers in a standardized manner in order to permit valid comparisons of similar cases among similar providers. The collection of patient safety work product allows the aggregation of sufficient data to identify and address underlying causal factors of patient safety problems. Both the Patient Safety Act and Patient Safety Rule, including any relevant guidance, can be accessed electronically at: *http://www.PSO.AHRQ.gov/regulations/regulations.htm.*

In order to facilitate standardized data collection, the Secretary of HHS authorized AHRQ to develop and maintain the Common Formats to improve the safety and quality of healthcare delivery. In August 2008, AHRQ issued the initial release of the formats, Version 0.1 Beta, developed for acute care hospitals. The second release of the Common Formats, Version 1.0, was announced in the **Federal Register** on September 2, 2009: 74 FR 45457–45458. This release was later replaced by Version 1.1, as announced in the **Federal Register** on March 31, 2010: 75 FR 16140–16142. Version 1.1 includes updated event descriptions, forms, and technical specifications for software developers. As an update to this release, AHRQ developed the beta version of an event-specific format—Device or Supply, including Health Information Technology—to capture information about patient safety events that are related to health information technology. This update was announced in the **Federal Register** on October 22, 2010: 75 FR 65359–65360. With the release of the beta version of the Skilled Nursing Facilities format, AHRQ has made available Common Formats for two settings of care—acute care hospitals and skilled nursing facilities.

Definition of Common Formats

The term "Common Formats" refers to the common definitions and reporting formats, specified by AHRQ, that allow health care providers to collect and submit standardized information regarding patient safety events. The Common Formats are not intended to replace any current mandatory reporting system, collaborative/voluntary reporting system, research-related reporting system, or other reporting/recording system; rather the formats are intended to enhance the ability of health care providers to report information that is standardized both clinically and electronically.

The scope of Common Formats applies to all patient safety concerns including:

- Incidents—patient safety events that reached the patient, whether or not there was harm,
- Near misses or close calls—patient safety events that did not reach the patient, and
- Unsafe conditions—circumstances that increase the probability of a patient safety event.

The Common Formats include two general types of formats, generic and event-specific. The generic Common Formats pertain to all patient safety concerns. The three generic formats are: Healthcare Event Reporting Form, Patient Information Form, and Summary of Initial Report. The event-specific Common Formats pertain to frequently-

occurring and/or serious patient safety events. The skilled nursing facilities event-specific formats are: Device or Supply, including Health Information Technology; Fall; Healthcare-Associated Infection; Medication or Other Substance; and Pressure Ulcer.

This new format includes a description of patient safety events and unsafe conditions to be reported (event description) and a sample patient safety aggregate report and individual event summary in skilled nursing facilities. The Skilled Nursing Facilities Common Format is available at the PSO Privacy Protection Center (PPC) Web site: *https://www.psoppc.org/web/patientsafety.*

Commenting on Skilled Nursing Facilities Common Format

To allow for greater participation by the private sector in the subsequent development of the Common Formats, AHRQ engaged the National Quality Forum (NQF), a non-profit organization focused on health care quality, to solicit comments and advice to guide the further refinement of the Common Formats. The NQF began this process with feedback on AHRQ's 0.1 Beta release of the Common Formats. Based upon the expert panel's feedback, AHRQ, in conjunction with the PSWG, further revised and refined the Common Formats and released Version 1.0.

The review process above was repeated again from September 2009 through February 2010 to further refine Common Formats Version 1.0 and incorporate public comments prior to finalization of the technical specifications for electronic implementation. The latest version of the formats is Version 1.1.

The Agency is specifically interested in obtaining feedback from both the private and public sectors on this new format for skilled nursing facilities to guide their improvement. Information on how to comment and provide feedback on the Common Formats, the Skilled Nursing Facilities beta version, is available at the National Quality Forum (NQF) Web site for Common Formats: *http://www.Quality.forum.org/projects/commonformats.aspx.*

Common Formats Development

In anticipation of the need for Common Formats, AHRQ began their development in 2005 by creating an inventory of functioning private and public sector patient safety reporting systems. This inventory provides an evidence base that informs construction of the Common Formats. The inventory now numbers 69 and includes many systems from the private sector, including prominent academic settings, hospital systems, and international reporting systems (*e.g.,* from the United Kingdom and the Commonwealth of Australia). In addition, virtually all major Federal patient safety reporting systems are included, such as those from the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Department of Defense (DoD), and the Department of Veterans Affairs (VA).

Since February 2005, AHRQ has coordinated an interagency Federal Patient Safety Work Group (PSWG) to assist AHRQ with developing and maintaining the Common Formats. The PSWG includes major health agencies within the HHS—CDC, Centers for Medicare & Medicaid Services, FDA, Health Resources and Services Administration, the Indian Health Service, the National Institutes of Health, the National Library of Medicine, Office of the National Coordinator for Health Information Technology (ONC), the Office of Public Health and Science, the Substance Abuse and Mental Health Services Administration—as well as the DoD and the VA.

The PSWG assists AHRQ with assuring the consistency of definitions/formats with those of relevant government agencies as refinement of the Common Formats continues. When developing Common Formats, AHRQ first reviews existing patient safety event reporting systems from a variety of health care organizations. Working with the PSWG and Federal subject matter experts, AHRQ drafts and releases beta versions of the Common Formats for public review and comment. To the extent practicable, the Common Formats are also aligned with World Health Organization (WHO) concepts, framework, and definitions contained in their draft International Classification for Patient Safety (ICPS).

The process for updating and refining the formats will continue to be an iterative one. Future versions of the Common Formats will be developed for ambulatory settings, such as ambulatory surgery centers and physician and practitioner offices. More information on the Common Formats can be obtained through AHRQ's PSO Web site: *http://www.PSO.AHRQ.gov/index.html.*

Dated: February 23, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–4813 Filed 3–4–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0770]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National HIV Behavioral Surveillance System (NHBS)—0920–0770 exp. 03/31/2011)—Revision-National Center for HIV, Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this data collection is to monitor behaviors related to human immunodeficiency virus (HIV) infection among persons at high risk for infection in the United States. The primary objectives of NHBS are to obtain data from samples of persons at risk to: (a) Describe the prevalence and trends in risk behaviors; (b) describe the prevalence of and trends in HIV testing and HIV infection; (c) describe the prevalence of and trends in use of HIV prevention services; (d) identify met and unmet needs for HIV prevention services in order to inform health departments, community-based organizations, community planning groups and other stakeholders. This project addresses the goals of CDC's HIV prevention strategic plan, specifically the goal of strengthening the national capacity to monitor the HIV epidemic to better direct and evaluate prevention efforts.

For the proposed data collection, CDC has revised the interview data collection instruments. A few questions were added (related to health care access and utilization, use of pre-exposure prophylaxis, homophobia, HIV stigma, and discrimination), some were removed, and others were revised from the previously approved instrument to make them easier for respondents to

understand and respond appropriately. The project activities and methods will remain the same as those used in the previously approved collection.

Data are collected through anonymous, in-person interviews conducted with persons systematically selected from 25 Metropolitan Statistical Areas (MSAs) throughout the United States; these 25 MSAs were chosen based on having high AIDS prevalence. Persons at risk for HIV infection to be interviewed for NHBS include men who have sex with men (MSM), injecting drug users (IDUs), and heterosexuals at increased risk of HIV (HET). A brief screening interview will be used to determine eligibility for participation in the behavioral assessment. The data from the behavioral assessment will provide estimates of behavior related to the risk of HIV and other sexually transmitted diseases, prior testing for HIV, and use of HIV prevention services. All persons interviewed will also be offered an HIV test and will participate in a pre-test counseling session. No other federal agency systematically collects this type of information from persons at risk for HIV infection. These data have substantial impact on prevention program development and monitoring at the local, state, and national levels.

CDC estimates that NHBS will involve, per year in each of the 25 MSAs, eligibility screening for 50 to 200 persons and eligibility screening plus the survey with 500 eligible respondents, resulting in a total of 37,500 eligible survey respondents and 7,500 ineligible screened persons during a 3-year period. Data collection will rotate such that interviews will be conducted among one group per year: MSM in year 1, IDU in year 2, and HET in year 3. The type of data collected for each group will vary slightly due to different sampling methods and risk characteristics of the group.

This request is for a revision and an approval for an additional 3 years of data collection. Participation of respondents is voluntary and there is no cost to the respondents other than their time. The total estimated annualized burden hours are 9,931.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Responses per respondent	Average burden per response; (in hours)
Year 1 (MSM):				
Persons Screened	Screener	17,500	1	5/60
Eligible Participants	Survey	12,500	1	30/60
Year 2 (IDU):				
Persons Referred by Peer Recruiters	Screener	13,750	1	5/60
Eligible Participants	Survey	12,500	1	54/60
Peer Recruiters	Recruiter Debriefing	6,250	1	2/60
Year 3 (HET):				
Persons Referred by Peer Recruiters	Screener	13,750	1	5/60
Eligible Participants	Survey	12,500	1	39/60
Peer Recruiters	Recruiter Debriefing	6,250	1	2/60

Petunia Gissendaner,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–5092 Filed 3–4–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–226]

Request for Information on Implementation of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347)

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) requests comments from the public on implementing the provisions of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347). A copy of the Act is posted on the Internet at *http://www.cdc.gov/niosh/docket* in the NIOSH Docket number 226. The Federal government is developing an implementation plan, and comments from the public will assist in this process by gaining perspectives from interested parties on ways to meet the Act's requirements. The public is invited to submit written comments to the NIOSH Docket number 226. A public meeting on March 3, 2011, was previously announced in the **Federal Register** (76 FR 7862) on February 11, 2011 to accept oral comments from the public.

Public Comment Period: All comments must be received by April 29, 2011.

ADDRESSES: Written comments may be submitted to the NIOSH Docket Office, identified by Docket number NIOSH–226, by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

A complete electronic docket containing a copy of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347) and all comments submitted will be available on the NIOSH Web site at *http://www.cdc.gov/niosh/docket.* All comments received will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. Because comments will be made public, they should not include any sensitive personal information, such as a person's social security number; date of birth; driver's license number; state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health

information, or any non-public corporate or trade association information, such as trade secrets or other proprietary information.

FOR FURTHER INFORMATION CONTACT: Roy Fleming, Sc.D., CDC/NIOSH, 1600 Clifton Road, NE., MS–E20, Atlanta, Georgia 30333, Toll free 1–866–426–3673, *e-mail: nioshdocket@cdc.gov.*

Dated: February 28, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–5111 Filed 3–4–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Determine of the Benefits of Work and/or School Exclusion to Respiratory Illness in Decreasing Influenza Transmission, Funding Opportunity Number (FOA) CK11–007, Initial Review

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 aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., May 2, 2011 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, *Telephone:* (770) 997–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: [The meeting will include the initial review, discussion, and evaluation of applications received in response to "Determine of the Benefits of work and/or School Exclusion to Respiratory Illness in Decreasing Influenza Transmission"]

Contact Person for More Information: Dr. Amy Yang, Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, *Telephone:* (404) 498–2733.

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 25, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–5102 Filed 3–4–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH 134–A]

Request for Information: Update of NIOSH Nanotechnology Strategic Plan for Research and Guidance

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) seeks comment on the types of hazard identification and risk management research that should be considered for updating the NIOSH 2009 nanotechnology strategic plan.

Public Comment Period: Comments must be received by April 15, 2011.

ADDRESSES: Written comments, identified by docket number NIOSH 134–A, may be submitted by any of the following ways:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C–34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail:* nioshdocket@cdc.gov.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Room 109, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available thirty days after the public comment period on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided. All electronic comments should be formatted as Microsoft Word. Please make reference to docket number NIOSH 134–A.

Background: Since 2004, the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) has pioneered research on the toxicological properties and characteristics of nanoparticles. This research has involved characterizing occupationally relevant nanoparticles for predicting whether these particles pose a risk of adverse health effects and for providing guidance on controlling workplace exposures. In September 2005, NIOSH developed a strategic plan to further guide the Institute in identifying and prioritizing nanotechnology research. In 2009 this strategic plan [*http://*www.cdc.gov/niosh/topics/nanotech/strat_plan.html] was updated based on knowledge gained from results of ongoing NIOSH research [*see Progress Toward Safe Nanotechnology in the Workplace; A Report from the NIOSH Nanotechnology Research Center http://*www.cdc.gov/niosh/docs/2007–123/] and from stakeholder input.

NIOSH would like to build on the accomplishments of ongoing research [*see http://www.cdc.gov/niosh/docs/2010–104/*] to develop strategic research goals and objectives through 2015. NIOSH has identified 10 critical research areas for nanotechnology research and communication. These 10 critical research areas are (1) toxicity and internal dose, (2) measurement methods, (3) exposure assessment, (4) epidemiology and surveillance, (5) risk assessment, (6) engineering controls and personal protective equipment (PPE), (7) fire and explosion safety, (8) recommendations and guidance, (9) communication and information, and (10) applications.

NIOSH is considering focusing the overarching strategic research goals for these critical areas on 5 key goals: (1) Provide guidance to protect workers, (2) alert workers, employers, governments, and the public about possible new hazards, (3) assess the hazards of nanomaterials and the risks to workers, (4) help workers by assessing and implementing exposure registries, and (5) assess the level of protection practiced in US workplaces.

NIOSH requests comment on how research in these 10 critical areas and the 5 overarching goals can be enhanced. Examples of requested information include, but are not limited to:

(1) The need for toxicity evaluation and/or workplace exposure characterization of engineered nanoparticles not currently being studied*.

(2) Development of technical and educational guidance materials*.

(3) Development of additional partnerships and collaborations*.

(4) Research in the development of risk management strategies (*e.g.,* exposure assessment, engineering controls)*.

Note: * provide rationale for recommendations.

FOR FURTHER INFORMATION CONTACT: Charles L. Geraci, NIOSH, Robert A. Taft Laboratories, MS–C32, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8339.

Dated: February 28, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–5110 Filed 3–4–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Translational Programs in Lung Disease.

Date: March 24–25, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shelley S Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, 301–435–0303, *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Pediatric Heart Network Data Coordinating Center.

Date: March 29, 2011.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: William J Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5039 Filed 3–4–11; 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; PCMB Member Conflicts.

Date: March 17, 2011.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara J Thomas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@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; Chronic Pain Syndromes.

Date: March 22–23, 2011.

Time: 7 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov.*

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; PAR–08–160: Metabolic Effects Psychotropic Medications.

Date: March 31–April 1, 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: Reed A Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@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: March 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5040 Filed 3–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1957–DR; Docket ID FEMA–2011–0001]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1957–DR), dated February 18, 2011, and related determinations.

DATES: *Effective Date:* February 18, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 18, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows

I have determined that the damage in certain areas of the State of New York resulting from a severe winter storm and snowstorm during the period of December 26–27, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John Long, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Nassau and Suffolk Counties for Public Assistance.

Nassau, Rensselaer, and Richmond Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–5018 Filed 3–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1956–DR; Docket ID FEMA–2011–0001]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–1956–DR), dated February 17, 2011, and related determinations.

DATES: *Effective Date:* February 17, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 17, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Oregon resulting from a severe winter storm, flooding, mudslides, landslides, and debris flows during the period of January 13–21, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolphin A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oregon have been designated as adversely affected by this major disaster:

Clackamas, Clatsop, Crook, Douglas, Lincoln, and Tillamook Counties for Public Assistance.

All counties within the State of Oregon are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–5019 Filed 3–4–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–881, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100, NACARA); OMB Control No. 1615–0072.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 23, 2010, at 75 FR 80836, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 6, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0072 in the subject box. Written comments and suggestions from the public and affected agencies 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, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100, NACARA).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–1881; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form I–881 is used by a nonimmigrant to apply for suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order for USCIS to determine if it has jurisdiction over an individual applying for this release as well as to elicit information regarding the eligibility of an individual applying for release.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 55,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 660,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: March 1, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–5012 Filed 3–4–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Bonded Warehouse Regulations

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0041.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bonded Warehouse Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before May 6, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to

enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Bonded Warehouse Regulations.

OMB Number: 1651–0041.

Form Number: None.

Abstract: Owners or lessees desiring to establish a bonded warehouse must make written application to the U.S. Customs and Border Protection (CBP) port director where the warehouse is located. The application must include the warehouse location, a description of the premises, and an indication of the class of bonded warehouse permit desired. Alterations to or relocation of a bonded warehouse within the same CBP port may be made by applying to the CBP port director of the port in which the facility is located. The authority to establish and maintain a bonded warehouse is set forth in 19 U.S.C. 1555, and provided for by 19 CFR 19.2, 19 CFR 17, 19 CFR 19.3, 19 CFR 19.6, 19 CFR 19.14, and 19 CFR 19.36.

Current Actions: This submission is being made to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 198.

Estimated Number of Responses per Respondent: 47.

Estimated Total Annual Responses: 9,254.

Estimated Time per Response: 32 minutes.

Estimated Total Annual Burden Hours: 4,932.

Dated: March 1, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–5006 Filed 3–4–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Vendor Outreach Workshop for Small IT Businesses in the National Capitol Region of the United States

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Office of Small and Disadvantaged Business Utilization of the Department of the Interior is hosting a Vendor Outreach Workshop for small IT businesses in the National Capitol region of the United States that are interested in doing business with the Department. This outreach workshop will review market contracting opportunities for the attendees. Business owners will be able to share their individual perspectives with Contracting Officers, Program Managers and Small Business Specialists from the Department.

DATES: The workshop will be held on April 1, 2010 from 7 p.m. to 9 p.m.

ADDRESSES: The workshop will be held at the U.S. Department of the Interior Main Auditorium, 1849 C Street, NW., Washington, DC 20240. Register online at: *http://www.doi.gov/osdbu.*

FOR FURTHER INFORMATION CONTACT: Mark Oliver, Director, Office of Small and Disadvantaged Business Utilization, 1951 Constitution Ave., NW., MS–320 SIB, Washington, DC 20240, telephone 1–877–375–9927 (Toll-Free).

SUPPLEMENTARY INFORMATION: In accordance with the Small Business Act, as amended by Public Law 95–507, the Department has the responsibility to promote the use of small and small disadvantaged business for its acquisition of goods and services. The Department is proud of its accomplishments in meeting its business goals for small, small disadvantaged, 8(a), woman-owned, HUBZone, and service-disabled veteran-owned businesses. In Fiscal Year 2009, the Department awarded 56 percent of its $2.6 billion in contracts to small businesses.

This fiscal year, the Office of Small and Disadvantaged Business Utilization is reaching out to our internal stakeholders and the Department's small business community by conducting several vendor outreach workshops. The Department's presenters will focus on contracting and subcontracting opportunities and how small IT businesses can better market services and products. Over 3,000 small IT businesses have been targeted for this event. If you are a small IT business interested in working with the Department, we urge you to register online at: *http://www.doi.gov/osdbu* and attend the workshop.

These outreach events are a new and exciting opportunity for the Department's bureaus and offices to improve their support for small business. Additional scheduled events are posted on the Office of Small and Disadvantaged Business Utilization Web site at *http://www.doi.gov/osdbu.*

Mark Oliver,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 2011–5126 Filed 3–4–11; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2010–N269; BAC–4311–K9–S3]

Canaan Valley National Wildlife Refuge, Tucker and Grant Counties, WV; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for Canaan Valley National Wildlife Refuge (NWR). In this final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI by any of the following methods. You may request a hard copy or a CD–ROM.

Agency Web site: Download a copy of the document(s) at *http://www.fws.gov/northeast/planning/Canaan%20Valley/ccphome.html.*

E- mail: Send document requests to *northeastplanning@fws.gov.* Include "Canaan Valley NWR CCP" in the subject line of your e-mail.

U.S. Postal Service: Send document requests to Ken Sturm, Acting Refuge Manager, Canaan Valley NWR, 6263 Appalachian Highway, Davis, WV 26260–8061.

Fax: Attention: Ken Sturm, 304–866–3852.

FOR FURTHER INFORMATION CONTACT: Ken Sturm, Acting Refuge Manager, Canaan Valley NWR, 6263 Appalachian Highway, Davis, WV 26260–8061; phone: 304–866–3858; electronic mail: *ken_sturm@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Canaan Valley NWR. We started this plan's development through a notice in the **Federal Register** (72 FR 2709) on January 22, 2007. We released the draft CCP/EA to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (75 FR 30423) on June 1, 2010.

The 16,193-acre Canaan Valley NWR was established in 1994 to conserve and protect fish and wildlife resources and the unique wetland and upland habitats of this high-elevation valley. The refuge is located in Tucker County, WV, and has an approved acquisition boundary of 24,000 acres. It includes the largest wetland complex in the State, and encompasses the headwaters of the Blackwater and Little Blackwater Rivers. The refuge supports species of concern at both the Federal and State levels, including the West Virginia northern flying squirrel, bald eagle, and the Federally listed Cheat Mountain salamander and Indiana bat. Its dominant habitats include wet meadows, peatlands, shrub and forested swamps, beaver ponds and streams, northern hardwood forest, old fields and shrubland, and managed grassland.

Refuge visitors engage in wildlife observation and photography, environmental education, interpretation, hunting, and fishing. Management activities include maintaining and perpetuating the ecological integrity of the Canaan Valley wetland complex, perpetuating the ecological integrity of upland northern hardwood and northern hardwood-conifer forests to sustain wildlife and plant communities, providing a diversity of successional habitats in upland and wetland-edge shrublands, grasslands, old fields, and hardwood communities, and supporting wildlife-dependent recreation and education.

We announce our decision and the availability of the FONSI for the final CCP for Canaan Valley NWR in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft CCP/EA.

The CCP will guide us in managing and administering Canaan Valley NWR for the next 15 years. Alternative B, as we described in the draft CCP/EA, is the foundation for the final CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

CCP Alternatives, Including the Selected Alternative

Our draft CCP/EA (75 FR 30423) addressed several key issues, including the improvement of early successional habitat, the creation of trail connections on- and off-refuge, and the need for better hunter access.

To address these issues and develop a plan based on the purposes for establishing the refuge, and the vision and goals we identified, four alternatives were evaluated in the EA. The alternatives have some actions in common, such as protecting cultural resources, controlling invasive plant species, encouraging research that benefits our resource decisions, continuing to acquire land from willing sellers within our approved refuge boundary, and distributing refuge revenue-sharing payments to counties.

Other actions distinguish the alternatives. Alternative A, or the "No Action Alternative," is defined by our current management activities. It serves as the baseline against which to compare the other three alternatives. Our habitat management and visitor services programs would not change under this alternative. We would continue to use the same tools and techniques, and not expand existing facilities.

Alternative B, the "Service-Preferred Alternative," is designed to balance the conservation of a mixed-forest matrix landscape with the management of early successional habitats and the protection of wetlands. The habitat-type objectives in the plan identify focal species whose life and growth requirements would guide management activities in each respective habitat. We would facilitate the removal of more deer from the refuge by increasing access and opening more lands to rifle hunting, and we would officially open the refuge to fishing. We would create more trail connections, expand visitor center hours, build a new environmental education pavilion, and increase the number of environmental education and interpretation programs.

In Alternative C, we would increase access and infrastructure to support more priority public uses than any of the other alternatives. We would create a cross-valley trail that would run east-west through the northern part of the valley, and we would allow limited off-trail use in a designated area. With an increase in public access and infrastructure development, we anticipate a greater need for monitoring and control of invasive plants. We would also encourage additional research that would assess whether increased public use affects wildlife behavior, including nesting, feeding, and resting. Within the biological objectives, differences between this alternative and the others are more subtle, but generally emphasize early successional habitat management over forest stand improvement.

Alternative D strives to establish and maintain the ecological integrity of natural communities within the refuge. Management would range from passive, or "letting nature take its course," to actively manipulating vegetation to create or hasten the development of mature forest structural conditions shaped by natural disturbances such as infrequent fires, ice storms, and small patch blow-downs. Under this alternative, no particular wildlife species would be a management focus. We would promote research and development of applied management practices to sustain and enhance the natural composition, patterns, and processes within their natural range in the Central Appalachian Forest. We would limit new visitor services infrastructure to already disturbed areas. We would enhance hunting and fishing opportunities in ways similar to Alternatives B and C.

Comments

We solicited comments on the draft CCP/EA for Canaan Valley NWR from June 1, 2010, to July 16, 2010 (75 FR 30423). During the comment period, we received 312 responses, both oral and written. All comments we received were evaluated. A summary of those comments and our responses to them is included as Appendix J in the CCP.

Selected Alternative

After considering the comments we received on our draft CCP/EA, we have selected Alternative B for implementation, for several reasons. Alternative B comprises the mix of actions that, in our professional judgment, works best towards achieving refuge purposes, our vision and goals, and the goals of other State and regional conservation plans. We also believe it most effectively addresses the key issues raised during the planning process. The basis of our decision is detailed in the FONSI, located in Appendix K of the CCP.

Public Availability of Documents

You can view or obtain documents as indicated under **ADDRESSES**.

Dated: January 19, 2011.

Wendi Weber,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–4043 Filed 3–7–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

National Park Service

Proposed Information Collection; Visibility Valuation Survey Pilot Study

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Public comments must be submitted on or before May 6, 2011.

ADDRESSES: Direct all written comments on this IC to Dr. Bruce Peacock, Chief, Social Science Division, Natural Resource Program Center, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525–5596 (mail); *Bruce_Peacock@nps.gov* (e-mail); or 970–267–2106 (phone).

FOR FURTHER INFORMATION CONTACT: Susan Johnson, Air Resources Division, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225 (mail); *Susan_Johnson@nps.gov* (e-mail); or (303) 987–6694 (phone).

I. Abstract

The Clean Air Act (Sections 169A, 169B, and 110(a)(2)(j)) charges the NPS with an "affirmative responsibility to protect air quality related values (including visibility)." The NPS believes the value of visibility changes should be represented in cost-benefit analyses regarding state and Federal efforts that may affect visibility (including the Regional Haze Rule, Title 40, Part 51 of the Code of Federal Regulations). Updated estimates of visibility benefits are required because the studies conducted in the 1970s and 1980s do not reflect current baseline visibility conditions in national parks and wilderness areas.

The NPS plans to conduct a nationwide stated preference survey to estimate the value of visibility changes in national parks and wilderness areas. Survey development and pre-testing have already been conducted under a previous IC (OMB Control Number 1024–0255). The purpose of this IC is to conduct a pilot study to test the survey instrument and implementation procedures prior to the full survey. After the pilot is completed, the NPS will submit a revised IC request to OMB for the full survey.

II. Data

OMB Number: None. This is a new collection.

Title: Visibility Valuation Survey Pilot Study.

Type of Request: New.

Affected Public: Individuals or households.

Respondent Obligation: Voluntary.

Estimated Number of Respondents: 1,676 potential respondents; 800 responses.

Estimated Time and frequency of Response: This is a one-time survey estimated to take 20 minutes per respondent to complete.

Estimated Total Annual Burden Hours: 267 hours.

III. Request for Comments

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. While you can ask us in your comment to withhold personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 28, 2011.

Robert Gordon,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2011–4983 Filed 3–4–11; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Denali National Park and Preserve Aircraft Overflights Advisory Council Within the Alaska Region Meeting

ACTION: Notice of meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council within the Alaska Region.

SUMMARY: The National Park Service (NPS) announces a meeting of the Denali National Park and Preserve Aircraft Overflights Advisory Council. The purpose of this meeting is to discuss mitigation of impacts from aircraft overflights at Denali National Park and Preserve. The Aircraft Overflights Advisory Council is authorized to operate in accordance with the provisions of the Federal Advisory Committee Act.

Public Availability of Comments: These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the Aircraft Overflights Advisory Council. Each meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

DATES: The Denali National Park and Preserve Aircraft Overflights Advisory Council meeting will be held on Thursday, March 24, 2011, from 9 a.m. to 5 p.m., Alaska Standard Time. The

meeting may end early if all business is completed.

Location: Alaska Mountaineering School, 13765 3rd Street, Talkeetna, Alaska 99676. Telephone (907) 733–1016.

FOR FURTHER INFORMATION CONTACT: Miriam Valentine, Denali Planning. E-mail: *Miriam_Valentine@nps.gov.* Telephone: (907) 733–9102 at Denali National Park, Talkeetna Ranger Station, PO Box 588, Talkeetna, AK 99676. For accessibility requirements please call Miriam Valentine at (907) 733–9102.

SUPPLEMENTARY INFORMATION: Meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers.

The agenda for the meeting will include the following, subject to minor adjustments:

1. Call to order
2. Roll Call and Confirmation of Quorum
3. Chair's Welcome and Introductions
4. Review and Approve Agenda
5. Member Reports
6. Agency and Public Comments
7. Superintendent and NPS Staff Reports
8. Agency and Public Comments
9. Other New Business
10. Agency and Public Comments
11. Set time and place of next Advisory Council meeting
12. Adjournment

Victor W. Knox,

Deputy Regional Director, Alaska.

[FR Doc. 2011–4986 Filed 3–4–11; 8:45 am]

BILLING CODE 4310–PF–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–762]

Certain Strollers and Playards; 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 February 1, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Graco Children's Products Inc. of Atlanta, Georgia. 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 strollers and playards by reason of infringement of certain claims of U.S. Patent No. 6,669,225 ("the '225 patent"); U.S. Patent No. 7,044,497 ("the '497 patent"); U.S. Patent No. 7,188,858 ("the '858 patent"); U.S. Patent No. 7,404,569 ("the '569 patent"); and U.S. Patent No. 6,510,570 ("the '570 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant request 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: Mareesa A. Frederick, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2574.

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 March 1, 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 strollers and playards that infringe one or more of claims 1, 8, and 15 of the '225 patent; claim 10 of the '497 patent; claim 1 of the '858 patent; claim 1 of the '569 patent; and claims 1 and 23 of the '570 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: Graco Children's Products Inc., 3 Glenlake Parkway, Atlanta, Georgia 30328.

(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: Baby Trend, Inc., 1607 S. Campus Ave., Ontario, CA 91761.

(c) The Commission investigative attorney, party to this investigation, is Mareesa A. Frederick, 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.

Issued: March 1, 2011.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–5007 Filed 3–4–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–298 (Third Review)]

Porcelain-on-Steel Cooking Ware From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on porcelain-on-steel cooking ware from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on October 1, 2010 (75 FR 62144) and determined on January 4, 2011 that it would conduct an expedited review (76 FR 2920, January 18, 2011).

The Commission transmitted its determination in this review to the Secretary of Commerce on February 28, 2011. The views of the Commission are contained in USITC Publication 4216 (February 2011), entitled *Porcelain-on-Steel Cooking Ware from China: Investigation No. 731–TA–298 (Third Review).*

Issued: February 28, 2011.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–5009 Filed 3–4–11; 8:45 am]

BILLING CODE P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

DEPARTMENT OF JUSTICE

Certification of the Attorney General; Maricopa County, Arizona

In accordance with Section 8 of the Voting Rights Act, 42 U.S.C. 1973f, I hereby certify that in my judgment the appointment of Federal observers is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Maricopa County, Arizona. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made under Section 4(b) of the Voting Rights Act, 42 U.S.C. 1973b(b), and published in the **Federal Register** on September 23, 1975 (40 FR 43746).

Dated: March 3, 2011.

Eric H. Holder Jr.,

Attorney General of the United States.

[FR Doc. 2011–5188 Filed 3–4–11; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)

Notice is hereby given that on March 2, 2011, a proposed Consent Decree ("Decree") in *United States and New Jersey* v. *Dominick Manzo, Carmella Manzo, and Ace-Manzo, Inc.,* Civil Action No. 3:97–cv–00289, was lodged with the United States District Court for the District of New Jersey.

The Decree resolves claims of the United States against the Defendants under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607 for the recovery of response costs incurred in connection with responding to the release or threat of release of hazardous substances at the Burnt Fly Bog Superfund Site, located in Monmouth and Middlesex Counties in New Jersey. The Decree also resolves the claims of the State of New Jersey for response costs and recovery of natural resource damages, and it resolves Defendants' counterclaims and third party action. Settlement in the amount of $19.025 million will be paid by Defendants and includes payments made by Defendants' insurance carriers.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and New Jersey* v. *Dominick Manzo, Carmella Manzo, and Ace-Manzo, Inc.,* Civil Action No. 3:97–cv–00289 (D.N.J.), D.J. Ref. 90–11–2–488A.

The Decree may be examined at U.S. EPA Region 2, 290 Broadway, New York, NY 10007–1866. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–5071 Filed 3–4–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on March 1, 2011, a proposed consent decree in *United States, et al.* v. *Arch Coal, Inc., et al.,* Civil Action No. 2:11-cv-00133, was lodged with the United States District Court for the Southern District of West Virginia.

The proposed Consent Decree will resolve claims alleged in this action by the United States, the State of West Virginia, and the Commonwealth of Kentucky against Arch Coal, Inc. and four of its subsidiaries (collectively, "Arch") for the discharge of pollutants into waters of the United States in violation of Section 301 of the Act, 33 U.S.C. 1311, and in violation of the conditions and limitations of National Pollutant Discharge Elimination System ("NPDES") permits issued by the States pursuant to Section 402 of the Act, 33 U.S.C. 1342, W. Va. Code § 22–11–8, and Ky. Rev. Stat. Ann. § 224.70–120. Under the proposed Consent Decree, Defendants will perform injunctive relief including: hiring a third-party consultant to develop and implement a compliance management system, creating a database to track information relevant to compliance efforts, conducting regular internal and third-party environmental compliance audits, implementing a system of tiered

response actions for any potential future violations, and conducting annual training for all employees and contractors with environmental responsibilities and/or responsibilities under the consent decree. In addition, Arch will pay a civil penalty of $4 million.

The Department of Justice will accept comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to *pubcomment-ees.enrd@usdoj.gov* or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Comments should refer to *United States, et al.* v. *Arch Coal, Inc., et al.,* Civil No. 2:11-cv-00133 (S.D.W.Va.) and D.J. Reference No. 90–5–1–1–09476/1.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Southern District of West Virginia, P.O. Box 1713, Charleston, WV 25326; and (2) United States Environmental Protection Agency (Region 3), 1650 Arch Street, Philadelphia, PA 19103. During the comment period, the proposed consent decree may also be examined on the following Department of Justice Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.*

A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and D.J. Reference 90–5–1–1–09476/1, and enclose a check in the amount of $22.50 for the consent decree (90 pages at 25 cents per page reproduction costs), made payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2011–5017 Filed 3–4–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on February 4, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ASTM International Standards ("ASTM") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between December 2010 and February 2011 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on December 6, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 10, 2011 (76 FR 1459).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–4918 Filed 3–4–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Green Seal, Inc.

Notice is hereby given that, on January 26, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Green Seal, Inc. ("Green Seal") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Green Seal, Inc., Washington, DC. The nature and scope of Green Seal's standards development activities are: Green Seal's standards focus on significant opportunities to reduce a product, service, or organization's life cycle impact. The categories Green Seal covers with its standards includes building and construction products, cleaning products and services, companies, hotels and lodging, lighting products, paints and coatings, paper products, personal care products and service, restaurants and food services, and vehicles and vehicle maintenance.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–4923 Filed 3–4–11; 8:45 am]

BILLING CODE M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on February 02, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Albemarle, Baton Rouge, LA, and Lehigh Hanson, Inc., Dallas, TX, have been added as parties to this venture. Also, Praxair, Danbury, CT; Metso Minerals, York, PA; Lehigh Cement Company LLC, Allentown, PA; Lehigh Northwest Cement Company, Seattle, WA; Lehigh Southwest, Concord, CA; Lehigh White Cement, Riverside, CA; Lehigh Inland Cement, Edmonton, CANADA; and Lehigh

Northwest Cement Ltd., Delta, CANADA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notifications disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on December 14, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act January 27, 2010 (75 FR 4423).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–4920 Filed 3–4–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open SystemC Initiative

Notice is hereby given that, on January 21, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open SystemC Initiative ("OSCI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ST–Ericsson SA, Grenoble, FRANCE, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notifications disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 350). The last notification was filed with the Department on October 14, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 16, 2010 (75 FR 70030).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–4916 Filed 3–4–11; 8:45 am]

BILLING CODE M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number OMB No. 1117–0004]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Permit To Export Controlled Substances/Export Controlled Substances for Re-Export—DEA Forms 161 and 161r

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will submit 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 until May 6, 2011. This process is conducted in accordance with 5 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 Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; 202–307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Cathy A. Gallagher at 202–307–7297 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:

- 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.

Overview of Information Collection 1117–0004

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Permit to Export Controlled Substances/Export Controlled Substances for Reexport—DEA Forms 161 and 161r.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA Forms 161 and 161r.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21 CFR 1312.21 and 1312.22 require persons who export controlled substances in Schedules I and II and who reexport controlled substances in Schedules I and II and narcotic controlled substances in Schedules III and IV to obtain a permit from DEA. Information is used to issue export permits, exercise control over exportation of controlled substances, and compile data for submission to the United Nations to comply with treaty requirements.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to

respond: It is estimated that 69 respondents will respond with Form 161, and 12 respondents will respond with Form 161r, with submissions as follows:

	Number of annual responses	Average time per response	Burden hours
DEA Form 161 (exportation only)	5,577	30 minutes (0.5 hours)	2,788.5
DEA Form 161r (reexportation)	196	45 minutes (0.75 hours)	147
Certification of exportation from United States to first country	196	15 minutes (0.25 hours)	49
Certification of re-exportation from first country to second country*	235.2	15 minutes (0.25 hours)	58.8
Total			3,043.3

*Assumes three separate re-exports to second countries.

(6) An estimate of the total public burden (in hours) associated with the collection:

3,043.3 annual burden hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: March 1, 2011.

Lynn Murray,

Department Clearance Officer, Department of Justice.

[FR Doc. 2011–5052 Filed 3–4–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0021]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Dispensing Records of Individual Practitioners

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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 until May 6, 2011. This process is conducted in accordance with 5 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 Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Cathy A. Gallagher at (202) 307–7297 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:

- 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 agencies 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.

Overview of This Information Collection 1117–0021

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Dispensing Records of Individual Practitioners.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: None.

Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit institutions, Federal government, State, local or Tribal government.

Abstract: 21 U.S.C. 827 requires that individual practitioners keep records of the dispensing and administration of controlled substances. This information is needed to maintain a closed system of distribution.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 81,397 respondents, with 81,397 responses annually to this collection. DEA estimates that it takes 30 minutes per year for each practitioner to maintain the necessary records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* This information collection creates an annual burden of 40,699 hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: March 1, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–5054 Filed 3–4–11; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings; Correction

SUMMARY: The National Council on Disability published a notice in the **Federal Register** of February 28, 2011, concerning a meeting of the Council. This document contains a correction to the times of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

In the **Federal Register** of February 28, 2011, in FR Doc. 11–4463, on page 10916, in the second column, correct the "Times and Dates" caption to read:

TIME AND DATES: The board meeting will be held on Thursday, March 10, 2011, 10:30 a.m.–5 p.m., ET, and Friday, March 11, 2011, 9 a.m.–10:30 a.m. ET, and from 2–3:30 p.m. ET, if necessary.

In the same **Federal Register** of February 28, 2011, in FR Doc. 11–4463, on page 10916, in the second column, please correct the "Matters to be Considered" caption to read:

MATTERS TO BE CONSIDERED: The tentative agenda for the board meeting includes annual ethics training, a demonstration of the agency's website redesign, a possible speaker from the U.S. Department of Health and Human Services, the "Living" regional forum, a review of the agency's budget and strategic plan implementation, and other items, to be determined. A portion of the meeting from 2 p.m.–3:30 p.m. ET on Friday, March 11, 2011 may be closed to discuss internal personnel rules and practices, pursuant to paragraph (c)(2) of the Sunshine Act, and in accordance with a determination made by the NCD Chairman.

Dated: March 3, 2011.

Aaron Bishop,

Executive Director.

[FR Doc. 2011–5162 Filed 3–3–11; 11:15 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–36974; NRC–2010–0374]

Notice of Availability of Final Supplement to the Environmental Assessment for the Proposed Pa'ina Hawaii, LLC Irradiator in Honolulu, HI

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a Final Supplement to the Environmental Assessment (EA) for the irradiator proposed by Pa'ina Hawaii, LLC (Pa'ina). On June 23, 2005, Pa'ina submitted an application to NRC requesting a license to possess and use byproduct material in connection with a proposed underwater irradiator. NRC completed the Final EA and Finding of No Significant Impact for this action on August 10, 2007, and subsequently issued a license to Pa'ina on August 17, 2007. The license authorizes Pa'ina to possess and use byproduct material (sealed sources) in a commercial underwater irradiator to be located adjacent to Honolulu International Airport on Palekona Street near Lagoon Drive. NRC is issuing this Final Supplement to the EA in response to a decision of the Atomic Safety and Licensing Board (Board) from the NRC's Atomic Safety and Licensing Board Panel. As directed by the Board, this Final Supplement addresses the following three areas: (1) Environmental impacts of accidents that might occur during the transport of cobalt-60 sources to and from Pa'ina's irradiator, (2) electron-beam technology as an alternative to cobalt-60 irradiation, and (3) alternative sites for Pa'ina's irradiator.

In the first area identified by the Board, the staff finds that accidents occurring during the transport of cobalt-60 to or from Pa'ina's proposed irradiator will not cause a significant impact to the environment. This is due primarily to the very low likelihood cobalt-60 will be released from a shipping package. The low likelihood of release is due to several factors, including the small number of cobalt-60 shipments to Pa'ina's irradiator and the stringent safety requirements for the design of cobalt-60 shipping packages. In the second area identified by the Board, the staff finds that the environmental impacts of an electron-beam irradiator will be small for each resource area. The staff also finds that the impacts will not be significantly different than those associated with construction and operation of a cobalt-60 irradiator. In the third area identified by the Board, the staff finds that impacts associated with construction and operation of a cobalt-60 irradiator at alternative sites will be small and will not be significantly different than those at the proposed site. In particular, the staff finds that aircraft crashes involving the alternative sites will have no significant environmental impacts. The staff also finds that environmental impacts from earthquakes, tsunamis, and hurricanes at the alternative locations will be small.

Publicly available documents created or received at the NRC, including the Final Supplement to the EA, the August 10, 2007 EA, and the Pa'ina license and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the Final Supplement to the EA and related documents are provided in the table below:

Document	ADAMS Accession No.
2005 Materials License Application	ML051920106
2007 Final EA	ML071150121
2010 Draft Supplement to the EA	ML103220072
Comment Letter 1 of 5	ML103470076
Comment Letter 2 of 5	ML110100329
Comment Letter 3 of 5	ML110110256
Comment Letter 4 of 5	ML110130222
Comment Letter 5 of 5	ML110470273
2011 Final Supplement to the EA	ML110390325

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. In addition, documents relating to the administrative litigation associated with Pa'ina's application may be found in the Electronic Hearing Docket maintained by the NRC's Office of the Secretary at *http://ehd1.nrc.gov/EHD/*.

FOR FURTHER INFORMATION CONTACT: Johari Moore, Project Manager,

Environmental Review Branch A, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852. Telephone: 301–415–7694; fax number: 301–415–5369; e-mail: *Johari.Moore@nrc.gov*.

Dated at Rockville, Maryland, this 1st day of March 2011.

For the Nuclear Regulatory Commission.

Diana Diaz-Toro,

Acting Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–5058 Filed 3–4–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29591; 812–13759]

Eaton Vance Management, et al.; Notice of Application

March 1, 2011.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Eaton Vance Management ("EVM"), Eaton Vance ETF Trust (the "Trust") and Foreside Fund Services, LLC.

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Series of certain actively managed open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: FILING DATES: The application was filed on March 5, 2010, and amended on August 10, 2010 and February 25, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 28, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: EVM and the Trust, Two International Place, Boston, MA 02110; Foreside Fund Services, LLC, Three Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990 or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust will be registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust will initially offer five actively-managed investment series: Eaton Vance Enhanced Short Maturity ETF, Eaton Vance Government Limited Maturity ETF, Eaton Vance Intermediate Municipal Bond ETF, Eaton Vance Prime Limited Maturity ETF and Eaton Vance Short Term Municipal Bond ETF (together, the "Initial Funds"). The investment objectives of Eaton Vance Enhanced Short Maturity ETF, Eaton Vance Government Limited Maturity ETF and Eaton Vance Prime Limited Maturity ETF will be to seek maximum current income, consistent with preservation of capital and daily liquidity. The investment objectives of Eaton Vance Intermediate Municipal Bond ETF and Eaton Vance Short Term Municipal Bond ETF will be to seek attractive tax-exempt income, consistent with preservation of capital.

2. Applicants request that the order apply to the Initial Funds and any future series of the Trust or of other open-end management companies that may utilize active management investment strategies ("Future Funds"). Any Future Fund will (a) advised by EVM or an entity controlling, controlled by, or under common control with EVM (together with EVM, an "Advisor"), and (b) comply with the terms and conditions of the application.[1] The Initial Funds and Future Funds together are the "Funds". Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies ("Portfolio Instruments").[2] Funds may also invest in "Depositary Receipts". A Fund will not invest in any Depositary Receipts that the Advisor deems to be illiquid or for which pricing information is not readily available.[3] Each Fund will operate as an actively managed exchange-traded fund ("ETF"). The Future Funds might include one or more ETFs which invest in other open-end and/or closed-end investment companies and/or ETFs.

3. EVM, a Massachusetts corporation, will be the investment advisor to the Initial Funds. Each Advisor is or will be registered as an "investment adviser" under the Investment Advisers Act of 1940 (the "Advisers Act"). The Advisor may retain investment advisers as sub-advisers in connection with the Funds

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company. Each Fund will comply with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

[2] Neither the Initial Funds nor any Future Fund will invest in options contracts, futures contracts or swap agreements.

[3] Depositary Receipts are typically issued by a financial institution, a "depositary", and evidence ownership in a security or pool of securities that have been deposited with the depositary. No affiliated persons of applicants will serve as the depositary bank for any Depositary Receipts held by a Fund.

(each, a "Subadvisor"). Any Subadvisor will be registered under the Advisers Act. A registered broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"), which may be an affiliate of the Advisor, will act as the distributor and principal underwriter of the Funds ("Distributor"). Foreside Fund Services, LLC will serve as the initial Distributor.

4. Applicants anticipate that a Creation Unit will consist of at least 50,000 Shares and that the price of a Share will range from $20 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Trust ("Authorized Participant") with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A broker or dealer registered under the Exchange Act ("Broker") or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation, a clearing agency registered with the Commission and affiliated with the Depository Trust Company ("DTC"), or (b) a participant in the DTC (such participant, "DTC Participant"). The Initial Funds and certain Future Funds will generally be purchased entirely for cash and will generally be redeemed in-kind for specified Portfolio Instruments ("Redemption Instruments"). However, the Trust reserves the right to accept and deliver Creation Units of the Initial Funds and any Future Fund by means of an in-kind tender of specified instruments ("Deposit Instruments") and to permit cash redemptions.[4] In-kind purchases and in-kind redemptions will be accompanied by an amount of cash specified by the Advisor ("Cash Amount"). The Deposit Instruments and the Cash Amount collectively are referred to as the "Creation Deposit." The Cash Amount is a cash payment designed to ensure that the net asset value of a Creation Deposit is identical to the net asset value of the Creation Unit it is used to purchase. The Trust may permit, in its discretion, with respect to one or more Funds, under certain circumstances, an in-kind purchaser or redeemer to substitute cash in lieu of depositing or receiving some or all of the requisite Deposit or Redemption Instruments.[5]

5. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee ("Transaction Fee") to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[6] All orders to purchase Creation Units will be placed with the Distributor and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus ("Prospectus") to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

6. Shares will be listed and traded at negotiated prices on a national securities exchange as defined in section 2(a)(26) of the Act (the "Stock Exchange") and traded in the secondary market. Applicants expect that Stock Exchange specialists ("Specialists") or market makers ("Market Makers") will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include arbitrageurs. Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[7] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[8] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their net asset value should ensure that the Shares will not trade at a material discount or premium in relation to net asset value per common share ("NAV").

8. Shares may be redeemed only if tendered in Creation Units. Redemption requests must be placed by or through an Authorized Participant. Applicants currently contemplate that Creation Units of the Initial Funds will be redeemed principally in-kind (together with a Cash Amount).[9] To the extent a Fund utilizes in-kind redemptions, Shares in Creation Units will be redeemable on any Business Day, which is defined to include any day that the Trust is open for business as required by section 22(e) of the Act, for the Redemption Instruments, which will be the same as the Deposit Instruments deposited by investors purchasing Creation Units on the same day, except for the limited exceptions noted below. The redeeming investor will also usually pay to the Fund a Transaction Fee.

9. Applicants state that in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, the Funds must comply with the federal securities laws, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act.[10] To the extent in-kind purchases and redemptions are utilized, the Deposit

[4] Applicants state that in determining whether a particular Fund will be selling or redeeming Creation Units on a cash or in-kind basis, the key consideration will be the benefit which would accrue to Fund investors. In many cases, particularly to the extent the Deposit Instruments are less liquid, investors may benefit by the use of all cash creations because the Advisor would execute trades rather than Market Makers (as defined below). Applicants believe that the Advisor may be able to obtain better execution in bond transactions due to its size, experience and potentially stronger relationships in the fixed income markets. With respect to redemptions, tax considerations may warrant in-kind redemptions which do not result in a taxable event for the Fund.

[5] On each Business Day (as defined below), prior to the opening of trading on the Stock Exchange (as defined below), the estimated All-Cash Payment for each Fund or a list of the required Deposit Instruments to be included in the Creation Deposit for each Fund, as applicable, the previous day's Cash Amount, and the estimated Cash Amount for the current day, will be made available. The Stock Exchange will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments.

[6] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments.

[7] If Shares are listed on NASDAQ, no Specialist will be contractually obligated to make a market in Shares. Rather, under NASDAQ's listing requirements, two or more Market Makers will be registered in Shares and required to make a continuous, two-sided market or face regulatory sanctions.

[8] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[9] To the extent consistent with other investment limitations, the Funds may invest in mortgage- or asset-backed securities, including a "to-be-announced transaction" or "TBA Transactions". Each Fund intends to substitute a cash-in-lieu amount to replace any Deposit Instrument or Redemption Instrument that is a TBA Transaction. A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA Transactions will be equivalent to the value of the TBA Transaction listed as a Deposit Instrument or Redemption Instrument.

[10] In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

Instruments and Redemption Instruments will correspond *pro rata* to the Fund portfolio, except that there may be minor differences between a basket of Deposit Instruments or Redemption Instruments and a true pro rata slice of a Fund's portfolio solely when (A) it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement or, (B) in the case of equity securities, rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots.[11]

10. Neither the Trust nor any Fund will be marketed or otherwise held out as a "mutual fund". Instead, each Fund will be marketed as an "actively-managed exchange-traded fund." Any advertising material where features of obtaining, buying or selling Creation Units are described or where there is reference to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

11. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[12]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from Brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the

[11] A tradeable round lot for an equity security will be the standard unit of trading in that particular type of security in its primary market.

[12] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Funds holding non-U.S. investments ("Global Funds") is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 12 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 12 calendar days following the tender of a Creation Unit. With respect to Future Funds that are Global Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application. Except as disclosed in the SAI for a Fund, deliveries of redemption proceeds for Global Funds are expected to be made within seven days.[13]

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 12 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund.

9. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect creations or redemptions in-kind.

Section 12(d)(1) of the Act

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request relief to permit Investing Funds (as defined below) to acquire Shares in excess of the limits in section 12(d)(l)(A) of the Act and to permit the Funds, their principal underwriters and any Brokers to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants request that these exemptions apply to: (a) Any Fund that is currently or subsequently part of the same "group of investment companies" as the Initial Funds within the meaning of section 12(d)(1)(G)(ii) of the Act as well as any principal underwriter for the Funds and any Brokers selling Shares of a Fund to an Investing Fund; and (b) each management investment company or unit investment trust registered under the Act that is not part of the same "group of investment companies" as the Funds and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies are referred to herein as "Investing Management Companies," such unit investment trusts are referred to herein as "Investing Trusts," and Investing Management Companies and Investing Trusts together are referred to herein as "Investing Funds").[14] Investing Funds do not include the Funds. Each Investing Trust will have a sponsor ("Sponsor") and each Investing Management Company will have an investment adviser within the meaning of section 2(a)(20)(A) of the Act ("Investing Fund Advisor") that does not control, is not controlled by or under common control with the Advisor. Each Investing Management Company may also have one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, an "Investing Fund Sub-Advisor"). Each Investing Fund Advisor and any Investing Fund Sub-Advisor will be registered as an investment adviser under the Advisers Act.

12. Applicants submit that the proposed conditions to the requested relief are designed to address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

13. Applicants propose a condition to prohibit an Investing Fund or Investing Fund Affiliate[15] from causing an investment by an Investing Fund in a Fund to influence the terms of services or transactions between an Investing Fund or an Investing Fund Affiliate and the Fund or Fund Affiliate. Applicants propose a condition to limit the ability of the Investing Fund Advisor, or Sponsor, any person controlling, controlled by or under common control with such Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(l) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with such Advisor or Sponsor ("Investing Fund's Advisory Group") from (individually or in the aggregate) controlling a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund Sub-Advisor, any person controlling, controlled by, or under common control with the Investing Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(l) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or

[13] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade date. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that they have under rule 15c6–1.

[14] Applicants anticipate that there may be Investing Funds that are not part of the same group of investment companies as the Funds but may be subadvised by an Advisor.

[15] An "Investing Fund Affiliate" is defined as the Investing Fund Advisor, Investing Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. A "Fund Affiliate" is defined as an investment adviser, promoter or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

sponsored by the Investing Fund Sub-Advisor or any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor ("Investing Fund's Sub-Advisory Group").

14. Applicants propose other conditions to limit the potential for an Investing Fund and certain affiliates of an Investing Fund (including Underwriting Affiliates) to exercise undue influence over a Fund and certain of its affiliates, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor or Investing Fund Sub-Advisor, employee or Sponsor is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to the Fund is covered by section 10(f) of the Act.

15. Applicants propose several conditions to address the concerns regarding layering of fees and expenses. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, an Investing Fund Advisor, trustee of an Investing Trust ("Trustee") or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, Trustee or Sponsor or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, Trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Investing Fund in the Fund. Applicants also propose a condition to prevent any sales charges or service fees on shares of an Investing Fund from exceeding the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[16]

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

17. To ensure that the Investing Funds understand and comply with the terms and conditions of the requested order, any Investing Fund that intends to invest in a Fund in reliance on the requested order will be required to enter into a participation agreement ("FOF Participation Agreement") with the Fund. The FOF Participation Agreement will include an acknowledgment from the Investing Fund that it may rely on the order only to invest in the Funds and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

18. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person ("second tier affiliate"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an "Affiliated Fund").

19. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[17] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or a second-tier affiliates.[18]

20. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchases and redeemers, respectively, and will correspond *pro rata* to the Fund's portfolio instruments. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be effected in exactly the same manner for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds. Therefore, applicants state that the in-

[16] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule that may be adopted by FINRA.

[17] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[18] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to cover the in-kind transactions that may accompany such sales and redemptions.

kind purchases and redemptions create no opportunity for affiliated persons or the Applicants to effect a transaction detrimental to other holders of Shares of that Fund. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

21. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[19] Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchases and redeemers, respectively, and will correspond *pro rata* to the Fund's portfolio instruments. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively Managed Exchange-Traded Fund Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Advisor or any Subadvisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Advisor or a person controlling, controlled by or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Advisor and any Investing Fund Sub-Advisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the

[19] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on this section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5064 Filed 3–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63999; File No. SR–FINRA–2010–061]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change Adopting, as Modified by Amendment No. 1, Rules Governing Guarantees, Carrying Agreements, Security Counts and Supervision of General Ledger Accounts in the Consolidated FINRA Rulebook

March 1, 2011.

I. Introduction

On November 12, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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 rules governing guarantees, carrying agreements, security counts and supervision of general ledger accounts in the consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal Register** on November 24, 2010.[3] The Commission received one comment letter on the proposed rule change.[4] On February 24, 2011, FINRA responded to the comments and filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 63375 (November 24, 2010), 75 FR 74759 (December 1, 2010) (Notice of Filing of Proposed Rule Change; File No. SR–FINRA–2010–061) ("Notice").

[4] *See* Letter from D. Grant Vingoe, Arnold & Porter LLP ("Arnold & Porter"), to Elizabeth M. Murphy, Secretary, SEC, dated December 22, 2010 (*available at http://www.sec.gov/comments/sr-finra-2010–061/finra2010061.shtml*).

[5] *See* Amendment No. 1 dated February 24, 2011 ("Amendment No. 1") and FINRA's response to comments, dated February 24, 2011 ("Response to Comments"), which are available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA, and on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml*.

proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change, as Modified by Amendment No. 1

A. Background

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[6] FINRA is proposing to adopt new, consolidated rules governing guarantees, carrying agreements, security counts and supervision of general ledger accounts. FINRA proposes to adopt FINRA Rules 4150 (Guarantees by, or Flow Through Benefits for, Members), 4311 (Carrying Agreements), 4522 (Periodic Security Counts, Verifications and Comparisons) and 4523 (Assignment of Responsibility for General Ledger Accounts and Identification of Suspense Accounts) in the Consolidated FINRA Rulebook and to delete NASD Rule 3230, NYSE Rules 322, 382, 440.10 and 440.20 and NYSE Rule Interpretations 382/01 through 382/05, 409(a)/01 and 440.20/01.[7]

The proposed rules would, in combination with other consolidated financial responsibility rules approved by the SEC,[8] enhance FINRA's authority to execute effectively its financial and operational surveillance and examination programs. Consistent with the approach that FINRA discussed in SR–FINRA–2008–067 and *Regulatory Notice* 09–71, many of the requirements set forth in the proposed rules are substantially the same as requirements found in current rules and, where appropriate, are tiered to apply only to carrying or clearing firms, or to firms that engage in certain specified activities.[9] Certain of the proposed rule provisions are new for FINRA members that are not Dual Members ("non-NYSE members"). Certain other provisions are new for both Dual Members and non-NYSE members alike.

In Amendment No. 1, FINRA proposes new Supplementary Material .04 to Rule 4311. This Supplementary Material is technical in nature. It is intended to remind members that, for purposes of paragraphs (c)(1)(F) and (c)(2) of Rule 4311, the receipt and delivery of customers' funds and securities and the safeguarding of such funds and securities must comply with the requirements of the SEC's financial responsibility rules, in particular Exchange Act Rule 15c3–3 and applicable SEC guidance. Amendment No. 1 would redesignate the original Supplementary Material .04 as .05.

2. Proposed Amendments

FINRA proposes the following amendments to its rules.

(A) Proposed FINRA Rule 4150 (Guarantees by, or Flow Through Benefits for, Members)

As stated in the Notice, Proposed Rule 4150(a) is based in large part on NYSE Rule 322.[10] Proposed Rule 4150(a) requires that prior written notice be given to FINRA whenever a member guarantees, endorses or assumes, directly or indirectly, the obligations [11] or liabilities of another person (including an entity).[12] Paragraph (b) of the rule requires that prior written approval must be obtained from FINRA whenever any member receives flow-through capital benefits in accordance with Appendix C of Exchange Act Rule 15c3–1.[13]

(B) Proposed FINRA Rule 4311 (Carrying Agreements)

Proposed FINRA Rule 4311 is based on NASD Rule 3230 and NYSE Rule 382.[14] The proposed rule governs the requirements applicable to members when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected. Historically, the purpose of the NASD and NYSE rules upon which the proposed rule is based has been to ensure that certain functions and responsibilities are clearly allocated to either the introducing or carrying firm, consistent with the requirements of the self-regulatory organization and SEC's financial responsibility and other rules and regulations, as applicable.[15]

As discussed in the Notice, Proposed FINRA Rule 4311(a)(1) prohibits a member, unless otherwise permitted by FINRA, from entering into an agreement for the carrying on an omnibus or fully disclosed basis, of any customer account in which securities transactions can be effected, unless the agreement is with a carrying firm that is a FINRA member.

Proposed FINRA Rule 4311(b)(1) requires that the carrying firm must submit to FINRA for prior approval any agreement for the carrying of accounts, whether on an omnibus or fully disclosed basis, before such agreement may become effective.[16] The proposed rule also provides that the carrying firm must submit to FINRA for prior approval any material changes to an approved carrying agreement before the changes may become effective. The proposed rule codifies the practice under NASD Rule 3230 of permitting use of pre-approved standardized forms of agreement, with the exception of agreements with parties that are not U.S.-registered broker-dealers. The proposed rule requires a carrying firm to submit to FINRA for approval each carrying agreement with a non-U.S.-registered broker-dealer.

FINRA Rule 4311(b)(3) codifies the current practice under NYSE Rule 382 of requiring that as early as possible, but

[6] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[7] For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

[8] *See* Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (Order Granting Accelerated Approval to Proposed Rule Change; File No. SR–FINRA–2008–067). *See also Regulatory Notice* 09–71 (December 2009) (SEC Approves Consolidated FINRA Rules Governing Financial Responsibility) and *Regulatory Notice* 09–03 (January 2009) (Financial Responsibility and Related Operational Rules).

[9] For purposes of the new consolidated financial responsibility rules and the proposed rules, FINRA has specified in the rule text where appropriate that all requirements that apply to a member that clears or carries customer accounts also apply to any member that, operating pursuant to the exemptive provisions of Exchange Act Rule 15c3–3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder. For further discussion, *see* 74 FR 58334. *See also* proposed FINRA Rule 4523.02 in this rule filing.

[10] NASD Rules do not have a provision that corresponds to NYSE Rule 322. Accordingly, the requirements of proposed FINRA Rule 4150 would be new to non-NYSE members.

[11] FINRA noted that the term "obligations" includes financial obligations, as well as other obligations that may have a financial impact on a member, such as performance obligations.

[12] NASD Rule 0120(n) defines "person" to include any natural person, partnership, corporation, association, or other legal entity. Similarly, NYSE Rule 2(d) states that "person" means a natural person, corporation, limited liability company, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not. All references to "persons" in this filing include entities.

[13] FINRA notes the proposed rule is designed to align with the requirements of Appendix C.

[14] Proposed FINRA Rule 4311 also is based on NYSE Rule Interpretations 382/01 through/05 and 409(a)/01.

[15] *See, e.g., Notice to Members* 94–7 (February 1994) (SEC Approves New NASD Rule Relating to the Obligations and Responsibilities of Introducing and Clearing Firms) and NYSE *Information Memo* 82–18 (March 1982) (Carrying Agreements—Amendments to Rules 382 and 405).

[16] Proposed FINRA Rule 4311(b)(1) is consistent with the requirements of NASD Rule 3230(e) and NYSE Rule 382(a).

not later than 10 business days, prior to the carrying of any accounts of a new introducing firm (including the accounts of any piggyback or intermediary introducing firm(s)), the carrying firm must submit to FINRA a notice identifying each such introducing firm by name and CRD number and include such additional information as FINRA may require.[17] FINRA Rule 4311(b)(4) expressly requires each carrying firm to conduct appropriate due diligence with respect to any new introducing firm relationship. The rule provides that such due diligence must assess the financial, operational, credit and reputational risk that such arrangement will have upon the carrying firm. The rule also provides that FINRA, in its review of any arrangement, may in its discretion require specific items to be addressed by the carrying firm as part of the firm's due diligence requirement under the rule. The rule further provides that the carrying firm must maintain a record, in accord with the time frames prescribed by Exchange Act Rule 17a–4(b), of the due diligence conducted for each new introducing firm.

Proposed FINRA Rule 4311(c) requires that each carrying agreement in which accounts are to be carried on a fully disclosed basis must specify the responsibilities of each party to the agreement.[18] The proposed rule also requires each carrying agreement in which accounts are to be carried on a fully disclosed basis to expressly allocate to the carrying firm the responsibility for preparing and transmitting statements of account to customers.

FINRA Proposed Rule 4311(d) requires that each customer whose account is introduced on a fully disclosed basis must be notified in writing upon the opening of the account of the existence of the carrying agreement and the responsibilities allocated to each respective party.[19]

Proposed FINRA Rule 4311(e) requires that each carrying agreement must expressly state that to the extent that a particular responsibility is allocated to one party, the other party or parties will supply to the responsible organization all appropriate data in their possession pertinent to the proper performance and supervision of that responsibility.[20]

Proposed FINRA Rule 4311(f) provides that a carrying agreement may authorize an introducing firm to issue negotiable instruments directly to its customers on the carrying firm's behalf, using instruments for which the carrying firm is the maker or drawer, provided that the parties comply with Exchange Act Rule 15c3–3 and further that the introducing firm represents to the carrying firm in writing that the introducing firm maintains, and will enforce, supervisory policies and procedures with respect to such negotiable instruments that are satisfactory to the carrying firm.[21]

Proposed FINRA Rules 4311(g) and 4311(h) generally address obligations of parties to provide referenced information, such as any written customer complaints and exception reports, to each other and/or to FINRA and are based upon existing NASD and NYSE rule provisions.

Proposed FINRA Rule 4311(i) provides that all carrying agreements must require each introducing firm to maintain its proprietary and customer accounts, and the proprietary and customer accounts of any introducing firm for which it is acting as an intermediary in obtaining clearing services from the carrying firm, in such a manner as to enable the carrying firm and FINRA to specifically identify the proprietary and customer accounts belonging to each introducing firm.[22]

(C) Proposed FINRA Rule 4522 (Periodic Security Counts, Verifications and Comparisons)

Proposed FINRA Rule 4522(a) requires each member firm that is subject to the requirements of Exchange Act Rule 17a–13 to make the counts, examinations, verifications, comparisons, and entries set forth in that rule.[23] Proposed FINRA Rule 4522(b) requires each carrying or clearing member subject to Exchange Act Rule 17a–13 to make more frequent counts, examinations, verifications, comparisons, and entries where prudent business practice would so require.[24]

(D) Proposed FINRA Rule 4523 (Assignment of Responsibility for General Ledger Accounts and Identification of Suspense Accounts)

Proposed FINRA Rule 4523 is intended to help assure the accuracy of each member's books and records.[25] Proposed FINRA Rule 4523(a) requires that each member must designate an associated person to be responsible for each general ledger bookkeeping account and account of similar function used by the member. The associated person must control and oversee entries into each such account and determine that the account is current and accurate as necessary to comply with all applicable FINRA rules and federal securities laws governing books and records and financial responsibility requirements.

Proposed FINRA Rule 4523(b) requires that each carrying or clearing member must maintain a record of the name of each individual assigned primary and supervisory responsibility for each account as required by paragraph (a) of the rule.

Proposed FINRA Rule 4523(c) provides that each member must record, in an account that must be clearly identifiable as a suspense account, money charges or credits and receipts or deliveries of securities whose ultimate disposition is pending determination.

(E) Implementation Date

FINRA will announce the implementation date of these proposed rule changes in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 120 days following publication of the *Regulatory Notice* announcing Commission approval.

III. Summary of Comment Letter and FINRA's Response

The proposed rule change was published for comment in the **Federal Register** on November 24, 2010, and the comment period closed on December 22, 2010. The Commission received one comment letter in response to the proposing release, the Arnold & Porter letter.[26] Arnold & Porter expressed concerns about the scope of proposed FINRA Rule 4311. Specifically, the commenter suggested that proposed FINRA Rule 4311 was not clear as to whether a FINRA member firm that

[17] This is a new requirement for non-NYSE carrying members, and permits FINRA to obtain additional information that enables it to evaluate the impact of the new carrying arrangement on the financial and operational condition of the member.

[18] Proposed FINRA Rule 4311(c) is based in part on NASD Rule 3230(a) and NYSE Rule 382(b).

[19] Proposed FINRA Rule 4311(d) is based in part on NASD Rule 3230(g), NYSE Rule 382(c), and NYSE Rule Interpretation 382/03.

[20] This is a new requirement for non-NYSE members.

[21] Proposed FINRA Rule 4311(f) is based in part on NASD Rule 3230(d) and NYSE Rule 382(f).

[22] Proposed FINRA Rule 4311(i) is based largely on NASD Rule 3230(h) and does not have a corresponding provision in NYSE Rule 382.

[23] Proposed FINRA Rule 4522(a) is based in part on NYSE Rule 440.10.

[24] *Id.*

[25] Proposed FINRA Rule 4523 is based on NYSE Rule 440.20. NASD Rules do not have a provision that corresponds to NYSE Rule 440.20; therefore, the requirements of proposed FINRA Rule 4523 are new to non-NYSE members.

[26] *See supra* note 4.

operates pursuant to the exemptive provision of Exchange Act Rule 15c3–3(k)(2)(i) is engaged in carrying activity and, thereby, subject to the rule. In FINRA's response, it noted that FINRA had specified in the rule text where appropriate those requirements of the proposed rule which are intended to apply to firms that operate pursuant to the exemptive provisions of Exchange Act Rule 15c3–3(k)(2)(i).[27]

The Arnold & Porter letter also raised concerns as to whether proposed FINRA Rule 4311 impacts the status of DVP/RVP clearance and settlement arrangements across international borders that may be structured as omnibus accounts where U.S.-registered broker-dealers seek to designate these accounts at a foreign affiliate as approved foreign control locations under Exchange Act Rule 15c3–3. As FINRA stated in its response, the proposed rule applies to arrangements to carry customer accounts and is "not meant to address the substantive requirements of SEA Rule 15c3–3(c) as it applies to good control locations nor to apply to cross-border clearance and settlement arrangements that are structured on a basis that is permissible under and consistent with SEC rules." [28]

Finally, FINRA noted that the propriety of structuring cross-border clearance and settlement arrangements in the manner described by the commenter, and the propriety of a U.S.-registered broker-dealer's reliance on Exchange Act Rule 15c3–3(k)(2)(i) for various business activities, were outside the scope of the proposed rule change.[29]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment No. 1, the comment letter received, and FINRA's response, and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[30] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Exchange Act,[31] which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission believes that FINRA adequately addressed the concerns raised by the commenter in its response. Further, the rule language in Amendment No. 1 reminds FINRA members that, for purposes of paragraphs (c)(1)(F) and (c)(2) of Rule 4311, the receipt and delivery of customers' funds and securities and the safeguarding of such funds and securities must comply with the requirements of the SEC's financial responsibility rules, in particular Exchange Act Rule 15c3–3 and applicable SEC guidance. The Commission believes the proposed rule change, as modified by Amendment No. 1, will further the purposes of the Exchange Act by, among other things, clarifying and streamlining the requirements surrounding carrying agreements, as well as the rules governing guarantees, security counts, and supervision of general ledger accounts.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[32] for approving the proposed rule change, as modified by Amendment No. 1 thereto, prior to the 30th day after publication of Amendment No. 1 in the **Federal Register**. The changes proposed in Amendment No. 1 add clarity to Rule 4311 and do not raise novel regulatory concerns. In particular, Amendment No. 1 further reminds FINRA members that, for purposes of paragraphs (c)(1)(F) and (c)(2) of Rule 4311, receipt and delivery of customers' funds and securities and the safeguarding of such funds and securities must comply with the requirements of the SEC's financial responsibility rules, in particular Exchange Act Rule 15c3–3 and applicable SEC guidance.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Exchange 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–FINRA–2010–061 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–FINRA–2010–061. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–061 and should be submitted on or before March 28, 2011.

[27] *See also* Notice, note 6, at FR 74760 (stating, "[f]or purposes of the new consolidated financial responsibility rules and the proposed rules, FINRA has specified in the rule text where appropriate that all requirements that apply to a member that clears or carries customer accounts also apply to any member that, operating pursuant to the exemptive provisions of SEA Rule 15c3–3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder.").

[28] *See* Response to Comments.

[29] *Id.*

[30] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78*o*–3(b)(6).

[32] 15 U.S.C. 78s(b)(2).

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[33] that the proposed rule change (SR–FINRA–2010–061), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5024 Filed 3–4–11; 8:45 am]

BILLING CODE 8011–01–P

[33] 15 U.S.C. 78(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63998; File No. SR–CBOE–2011–018]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify a Fee Schedule for the Sale by Market Data Express, LLC, of a BBO Data Feed for Securities Traded on CBSX

March 1, 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 17, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

This proposal submitted by Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") is to codify a fee schedule for the sale by Market Data Express, LLC ("MDX"), an affiliate of CBOE, of a data product that includes CBOE Stock Exchange ("CBSX") best bid and offer and trade data and certain related market data. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

[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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish fees that MDX will charge for the sale of certain market data with respect to the trading of securities on CBSX. CBSX is CBOE's stock trading facility.

CBOE currently collects and processes market data with respect to quotes and orders and the prices of trades for all securities that are traded on CBSX. This market data includes the "best bid and offer," or "BBO", consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size ("BBO data," sometimes referred to as "top of book data"). Data with respect to executed trades is referred to as "last sale" data. CBOE reports CBSX BBO data under the Consolidated Quotation Plan ("CQ Plan") and CBSX last sale data under the Consolidated Tape Association Plan ("CTA Plan") with respect to NYSE-listed securities and securities listed on exchanges other than NYSE and Nasdaq for inclusion in those Plans' consolidated data streams. CBOE reports CBSX BBO data and CBSX last sale data under the Nasdaq Unlisted Trading Privileges Plan ("Nasdaq/UTP Plan") with respect to Nasdaq-listed securities for inclusion in that Plan's consolidated data stream.

MDX provides to "Customers" [3] a real-time, low latency data feed that includes the CBSX BBO data and last sale data. (This data feed is sometimes referred to in this filing as the "BBO Data Feed"). The BBO and last sale data contained in the BBO Data Feed is identical to the data that CBOE sends to the processors under the CQ, CTA and Nasdaq/UTP Plans.[4] In addition, the BBO Data Feed includes certain data that is not included in the data sent to the processors under the CQ, CTA and Nasdaq/UTP Plans, namely, totals of customer versus non-customer shares at the BBO and All-or-None contingency orders priced better than or equal to the BBO. The purpose of this proposed rule change is to establish the fees MDX will charge for the sale of the BBO Data Feed.

MDX would charge Customers a "direct connect fee" of $500 per connection per month. MDX would also charge Customers a "per user fee" of $25 per month per "Authorized User" or "Device" for receipt of the BBO Data Feed by Subscribers. An "Authorized User" is defined as an individual user (an individual human being) who is uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MDX) and authorized by a Customer to access the BBO Data Feed supplied by the Customer. A "Device" is defined as any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form. Either a CBSX Trading Permit Holder or a non-CBSX Trading Permit Holder may be a Customer. All Customers would be assessed the same fees.

The proposed fees would be implemented on March 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 ("Act") [5] in general, and, in particular, with Section 6(b)(4) of the Act [6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among CBSX Trading Permit Holders and other persons using its facilities, and with Section 6(b)(5) [7] of the Act in that there will be no unfair discrimination between customers, issuers, brokers, or dealers in the distribution of the data. In addition, the Exchange believes that the proposed

[3] A "Customer" is any entity that receives the BBO Data Feed directly from MDX's system and then distributes it either internally or externally to Subscribers. A "Subscriber" is a person (other than an employee of a Customer) that receives the BBO Data Feed from a Customer for its own internal use.

[4] The Exchange notes that MDX makes available to Customers the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the Exchange sends that data to the processors under the CQ, CTA and Nasdaq/UTP Plans. The Exchange also notes that it also makes the BBO data and last sale data that is included in the BBO Data Feed available directly to CBSX Trading Permit Holders, and permits them to redistribute the data to their customers.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

rule change is consistent with the requirements of Section 6(b)(8)[8] of the Act in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The fees charged would be the same for all market participants, and therefore do not unreasonably discriminate among market participants.

The Exchange believes that the proposed market data fees are consistent with the requirements of the Act for several reasons. First, they compare favorably to fees that other markets charge for similar products. For example, the proposed direct connect fee of $500 per connection per month and per user fee of $25 per month compares favorably to the fees Nasdaq and NYSE charge for similar market data products. Nasdaq charges distributors of its "Nasdaq Basic" data feed a monthly fee of $1,500 per firm and charges each professional subscriber a per subscriber monthly charge of $10 for Nasdaq-listed stocks, $5 for NYSE-listed stocks, and $5 for Amex-listed stocks.[9] Like the BBO Data Feed, the Nasdaq Basic data feed includes best bid and offer data and last sale data as well as other market data. NYSE charges a monthly fee of $1,500 for the receipt of access to the "NYSE BBO" data feed plus $15 per month per professional subscriber and $5 per month per non-professional subscriber. The NYSE BBO data feed provides best bid and offer information for NYSE-traded securities.[10]

The Exchange also believes that the proposed fees for the BBO Data Feed are consistent with the requirements of the Act because competition provides an effective constraint on the market data fees that the Exchange, through MDX, has the ability and the incentive to charge. CBSX has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on CBOE to act reasonably in setting its fees for market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom CBSX must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. CBSX competes for order flow with the other national securities exchanges that currently trade equities, with electronic communication networks ("ECNs") and with other trading platforms.

CBOE is constrained in pricing the BBO Data Feed by the availability to market participants of alternatives to purchasing the BBO Data Feed. CBOE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. For example, the BBO data and last sale data available in the BBO Data Feed is included in the CQ, CTA and Nasdaq/UTP data feeds. The CQ, CTA and Nasdaq/UTP data feeds are widely distributed and relatively inexpensive, thus constraining CBOE's ability to price the BBO Data Feed. In this respect, the CQ, CTA and Nasdaq/UTP data feeds, which include CBSX's transaction information, are significant alternatives to the BBO Data Feed product.

Further, the various self-regulatory organizations, ECNs and the several Trade Reporting Facilities of FINRA that produce proprietary data are sources of competition for MDX. As noted above, Nasdaq and NYSE offer market data products that compete with the BBO Data Feed. In addition, the Exchange believes other exchanges may currently offer top-of-book market data products for a fee or for free.

For the reasons cited above, the Exchange believes that the BBO Data Feed offering, including the proposed fees, is equitable, fair, reasonable and not unreasonably discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed terms and fees for the BBO Data Feed fails to meet the requirements of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act. The Exchange believes that the BBO Data Feed offered by MDX will help attract new users and new order flow to CBSX, thereby improving CBSX's ability to compete in the market for order flow and executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–018. 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

[8] 15 U.S.C. 78f(b)(8).

[9] *See,* Securities Exchange Act Release No. 59933 (May 15, 2009), 74 FR 24889 (May 26, 2009) and *http://www.nasdaqtrader.com.* Nasdaq charges each non-professional subscriber to Nasdaq Basic a per subscriber monthly charge of $0.50 for Nasdaq-listed stocks, $0.25 for NYSE-listed stocks, and $0.25 for Amex-listed stocks.

[10] *See,* Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) and *http://www.nyxdata.com.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2). [sic]

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–CBOE–2011–018, and should be submitted on or before March 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5063 Filed 3–4–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63996; File No. SR–C2–2011–007]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Codify a Fee Schedule for the Sale by Market Data Express, LLC, of a BBO Data Feed for C2 Listed Options

March 1, 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 17, 2011, C2 Options Exchange, Incorporated ("C2" or the "Exchange") 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

This proposal submitted by C2 Options Exchange, Incorporated ("C2" or "Exchange") is to codify a fee schedule for the sale by Market Data Express, LLC ("MDX"), an affiliate of C2, of a data product that includes C2 best bid and offer and trade data and certain related market data. The text of the proposed rule change is available on the Exchange's website. (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, C2 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. C2 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 establish fees that MDX will charge for the sale of certain market data with respect to the trading of options on C2's market.

C2 currently collects and processes market data with respect to options quotes and orders and the prices of trades that are executed on the Exchange. This market data includes the "best bid and offer," or "BBO", consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size ("BBO data," sometimes referred to as "top of book data"). Data with respect to executed trades is referred to as "last sale" data. C2 formats its BBO data and last sale data according to Options Price Reporting Authority ("OPRA") specifications and sends the data to OPRA for redistribution to the public.

MDX provides to "Customers" [3] a real-time, low latency data feed that includes the C2 BBO data and last sale data. (This data feed is sometimes referred to in this filing as the "BBO Data Feed"). The BBO and last sale data contained in the BBO Data Feed is identical to the data that C2 sends to OPRA.[4] In addition, the BBO Data Feed includes certain data that is not included in the data sent to OPRA, namely, totals of customer versus non-customer contracts at the BBO, All-or-None contingency orders priced better than or equal to the BBO, and BBO data and last sale data for complex strategies (e.g., spreads, straddles, buy-writes, etc.). The purpose of this proposed rule change is to establish the fees MDX will charge for the sale of the BBO Data Feed.

MDX would charge Customers a "direct connect fee" of $1,000 per connection per month. MDX would also charge Customers a "per user fee" of $25 per month per "Authorized User" or "Device" for receipt of the BBO Data Feed by Subscribers. An "Authorized User" is defined as an individual user (an individual human being) who is uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MDX) and authorized by a Customer to access the BBO Data Feed supplied by the Customer. A "Device" is defined as any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form. Either a C2 Trading Permit Holder or a non-C2 Trading Permit Holder may be a Customer. All Customers would be assessed the same fees.

The proposed fees would be implemented on March 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 ("Act") [5] in general, and, in particular, with Section 6(b)(4) of the Act [6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among C2 Trading Permit Holders and other persons using its facilities, and with Section 6(b)(5) [7] of

[3] A "Customer" is any entity that receives the BBO Data Feed directly from MDX's system and then distributes it either internally or externally to Subscribers. A "Subscriber" is a person (other than an employee of a Customer) that receives the BBO Data Feed from a Customer for its own internal use.

[4] The Exchange notes that MDX makes available to Customers the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the Exchange sends that data to OPRA. The Exchange also notes that it also makes the BBO data and last sale data that is included in the BBO Data Feed available directly to its Trading Permit Holders, and permits them to redistribute the data to their customers.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

the Act in that there will be no unfair discrimination between customers, issuers, brokers, or dealers in the distribution of the data. In addition, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(8)[8] of the Act in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The fees charged would be the same for all market participants, and therefore do not unreasonably discriminate among market participants.

The Exchange believes that the proposed market data fees are consistent with the requirements of the Act for several reasons. First, they compare favorably to fees that other markets charge for similar products. The proposed direct connect fee of $1,000 per connection per month and per user fee of $25 per month compares favorably to the fees NASDAQ OMX PHLX and ISE charge for similar market data products. NASDAQ OMX PHLX charges Internal Distributors a monthly fee of $4,000 per organization, External Distributors a monthly fee of $5,000 per organization and monthly subscriber fees of $20 per Professional Subscriber and $1 per Non-Professional Subscriber for its "TOPO Plus Orders" data feed, which like the BBO Data Feed includes top-of-book data (including orders, quotes and trades) and other market data.[9] ISE charges distributors of its ISE Depth of Market Feed a monthly fee of $5,000 plus $50 per month per controlled device for Professionals and $5 per month per controlled device for Non-Professionals.[10]

The Exchange also believes that the proposed fees for the BBO Data Feed are consistent with the requirements of the Act because competition provides an effective constraint on the market data fees that the Exchange, through MDX, has the ability and the incentive to charge. C2 has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on C2 to act reasonably in setting its fees for market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom C2 must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. C2 currently competes with eight options exchanges (including C2's affiliate, Chicago Board Options Exchange) for order flow.[11]

C2 is constrained in pricing the BBO Data Feed by the availability to market participants of alternatives to purchasing the BBO Data Feed. C2 must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. For example, the BBO data and last sale data available in the BBO Data Feed is included in the OPRA data feed. The OPRA data is widely distributed and relatively inexpensive, thus constraining C2's ability to price the BBO Data Feed. In this respect, the OPRA data feed, which includes the exchange's transaction information, is a significant alternative to the BBO Data Feed product.

Further, other options exchanges can and have produced their own top-of-book products, and thus are sources of potential competition for MDX. As noted above, NASDAQ OMX PHLX and ISE offer market data products that compete with the BBO Data Feed. In addition, the Exchange believes other options exchanges may currently offer top-of-book market data products for a fee or for free.

For the reasons cited above, the Exchange believes that the BBO Data Feed offering, including the proposed fees, is equitable, fair, reasonable and not unreasonably discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed terms and fees for the BBO Data Feed fails to meet the requirements of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act. The Exchange believes that the BBO Data Feed offered by MDX will help attract new users and new order flow to the Exchange, thereby improving the Exchange's ability to compete in the market for options order flow and executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(2) of Rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–007 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–C2–2011–007. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).*

[8] 15 U.S.C. 78f(b)(8).

[9] *See,* NASDAQ OMX PHLX LLC Fee Schedule, Section X, Proprietary Data Feed Fees.

[10] *See,* ISE Schedule of Fees, Market Data Fees. The Exchange believes that ISE does not market a separate data product that includes only its top of book prices, but top of book prices are an important element of the ISE Depth of Market Feed.

[11] The Commission has previously made a finding that the options industry is subject to significant competitive forces. *See* e.g., Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2009–97) [sic] (order approving ISE's proposal to establish fees for a real-time depth of market data offering).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

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 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–C2–2011–007, and should be submitted on or before March 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5060 Filed 3–4–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63997; File No. SR–CBOE–2011–014]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify a Fee Schedule for the Sale by Market Data Express, LLC, of a BBO Data Feed for CBOE Listed Options

March 1, 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 17, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

This proposal submitted by Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") is to codify a fee schedule for the sale by Market Data Express, LLC ("MDX"), an affiliate of CBOE, of a data product that includes CBOE best bid and offer and trade data and certain related market data. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish fees that MDX will charge for the sale of certain market data with respect to the trading of options on CBOE's market.

CBOE currently collects and processes market data with respect to options quotes and orders and the prices of trades that are executed on the Exchange. This market data includes the "best bid and offer," or "BBO", consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size ("BBO data," sometimes referred to as "top of book data"). Data with respect to executed trades is referred to as "last sale" data. CBOE formats its BBO data and last sale data according to Options Price Reporting Authority ("OPRA") specifications and sends the data to OPRA for redistribution to the public.

MDX provides to "Customers" [3] a real-time, low latency data feed that includes the CBOE BBO data and last sale data. (This data feed is sometimes referred to in this filing as the "BBO Data Feed"). The BBO and last sale data contained in the BBO Data Feed is identical to the data that CBOE sends to OPRA.[4] In addition, the BBO Data Feed includes certain data that is not included in the data sent to OPRA, namely, totals of customer versus non-customer contracts at the BBO, All-or-None contingency orders priced better than or equal to the BBO, and BBO data and last sale data for complex strategies (e.g., spreads, straddles, buy-writes, etc.). The purpose of this proposed rule change is to establish the fees MDX will charge for the sale of the BBO Data Feed.

MDX would charge Customers a "direct connect fee" of $3,500 per connection per month. MDX would also charge Customers a "per user fee" of $25 per month per "Authorized User" or "Device" for receipt of the BBO Data Feed by Subscribers. An "Authorized User" is defined as an individual user (an individual human being) who is uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MDX) and authorized by a Customer to access the BBO Data Feed supplied by the Customer. A "Device" is defined as any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form. Either a CBOE Trading Permit Holder or a non-CBOE Trading Permit Holder may be a Customer. All Customers would be assessed the same fees.

The proposed fees would be implemented on March 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 ("Act") [5] in general, and, in particular, with Section 6(b)(4) of the Act [6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among CBOE Trading Permit

[3] A "Customer" is any entity that receives the BBO Data Feed directly from MDX's system and then distributes it either internally or externally to Subscribers. A "Subscriber" is a person (other than an employee of a Customer) that receives the BBO Data Feed from a Customer for its own internal use.

[4] The Exchange notes that MDX makes available to Customers the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the Exchange sends that data to OPRA. The Exchange also notes that it also makes the BBO data and last sale data that is included in the BBO Data Feed available directly to its Trading Permit Holders, and permits them to redistribute the data to their customers.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

Holders and other persons using its facilities, and with Section 6(b)(5)[7] of the Act in that there will be no unfair discrimination between customers, issuers, brokers, or dealers in the distribution of the data. In addition, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(8)[8] of the Act in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The fees charged would be the same for all market participants, and therefore do not unreasonably discriminate among market participants.

The Exchange believes that the proposed market data fees are consistent with the requirements of the Act for several reasons. First, they compare favorably to fees that other markets charge for similar products. The proposed direct connect fee of $3,500 per connection per month and per user fee of $25 per month compares favorably to the fees NASDAQ OMX PHLX and ISE charge for similar market data products. NASDAQ OMX PHLX charges Internal Distributors a monthly fee of $4,000 per organization, External Distributors a monthly fee of $5,000 per organization and monthly subscriber fees of $20 per Professional Subscriber and $1 per Non-Professional Subscriber for its "TOPO Plus Orders" data feed, which like the BBO Data Feed includes top-of-book data (including orders, quotes and trades) and other market data.[9] ISE charges distributors of its ISE Depth of Market Feed a monthly fee of $5,000 plus $50 per month per controlled device for Professionals and $5 per month per controlled device for Non-Professionals.[10]

The Exchange also believes that the proposed fees for the BBO Data Feed are consistent with the requirements of the Act because competition provides an effective constraint on the market data fees that the Exchange, through MDX, has the ability and the incentive to charge. CBOE has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on CBOE to act reasonably in setting its fees for market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom CBOE must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. CBOE currently competes with eight options exchanges (including CBOE's affiliate, C2 Options Exchange) for order flow.[11]

CBOE is constrained in pricing the BBO Data Feed by the availability to market participants of alternatives to purchasing the BBO Data Feed. CBOE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. For example, the BBO data and last sale data available in the BBO Data Feed are included in the OPRA data feed. The OPRA data is widely distributed and relatively inexpensive, thus constraining CBOE's ability to price the BBO Data Feed. In this respect, the OPRA data feed, which includes the exchange's transaction information, is a significant alternative to the BBO Data Feed product.

Further, other options exchanges can and have produced their own top-of-book products, and thus are sources of potential competition for MDX. As noted above, NASDAQ OMX PHLX and ISE offer market data products that compete with the BBO Data Feed. In addition, the Exchange believes other options exchanges may currently offer top-of-book market data products for a fee or for free.

For the reasons cited above, the Exchange believes that the BBO Data Feed offering, including the proposed fees, is equitable, fair, reasonable and not unreasonably discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed terms and fees for the BBO Data Feed fail to meet the requirements of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act. The Exchange believes that the BBO Data Feed offered by MDX will help attract new users and new order flow to the Exchange, thereby improving the Exchange's ability to compete in the market for options order flow and executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(2) of Rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–014. 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

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(8).

[9] *See,* NASDAQ OMX PHLX LLC Fee Schedule, Section X, Proprietary Data Feed Fees.

[10] *See,* ISE Schedule of Fees, Market Data Fees. The Exchange believes that ISE does not market a separate data product that includes only its top of book prices, but top of book prices are an important element of the ISE Depth of Market Feed.

[11] The Commission has previously made a finding that the options industry is subject to significant competitive forces. *See e.g.,* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2009–97) (order approving ISE's proposal to establish fees for a real-time depth of market data offering).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b-4(f)(2). [sic]

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–CBOE–2011–014, and should be submitted on or before March 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5061 Filed 3–4–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64002; File No. SR–FINRA–2011–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the By-Laws of FINRA Regulation, Inc. With Regard to District Committee Structure and Governance

March 2, 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 25, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the By-Laws of FINRA's regulatory subsidiary ("FINRA Regulation") with regard to District Committee structure and governance to, among other things, adjust the size and composition of District Committees to align more closely with the industry representation on the FINRA Board and replace District Nominating Committees with a process of direct nomination and election based on firm size, as discussed in more detail below.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On July 30, 2007, NASD and the New York Stock Exchange consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, the SEC approved amendments to the NASD By-Laws to implement governance and related changes.[3] The approved changes included a FINRA Board governance structure that balanced public and industry representation and designated seven governor seats to represent member firms based on the criteria of firm size.

FINRA Regulation (formerly known as NASD Regulation) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, as amended, which was first adopted at NASD Regulation's formation in 1996.[4]

The proposed rule change would modify the FINRA Regulation By-Laws (or "By-Laws") with regard to District Committees in several respects. It would:

- Adjust the size and composition of District Committees over a three-year transition period to align more closely with the industry representation on the FINRA Board;
- Replace District Nominating Committees with a process of direct nomination and election based on firm size;
- Codify current practice that District Committees meet on a regional basis;
- Eliminate the Advisory Council;
- Amend the qualification requirements and prescribe further term limits for District Committee members;
- Revise procedures for qualification and accounting of ballots to be administered solely by an Independent Agent; and
- Make other procedural and administrative changes.

District Committees, District Nominating Committees, Districts and Regions

The By-Laws establish the procedures for setting the size and electing the members to FINRA District Committees and District Nominating Committees.[5] These By-Law provisions have not changed significantly since becoming permanently effective in January 1998.[6] They were adopted in part to respond to undertakings ordered by the SEC in 1996 (the "1996 SEC Settlement Order") concurrent with the issuance of a report pursuant to Section 21(a) of the Exchange Act regarding NASD (the "1996 21(a) Report").[7]

The role of the District Committees was significantly narrowed as a result of undertakings in the 1996 SEC Settlement Order.[8] Until January 1998,

[3] *See* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (Order Approving File No. SR–NASD–2007–023).

[4] *See* Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) (Order Approving File No. SR–NASD–96–02).

[5] *See* FINRA Regulation By-Laws, Article VIII, Section 8.1 (Establishment of Districts) and Section 8.2 (Composition of District Committees).

[6] *See* Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997) (Order Approving File No. SR–NASD–96–29).

[7] *See In the Matter of National Association of Securities Dealers, Inc.,* Securities Exchange Act Release No. 37538, 1996 SEC LEXIS 2146 (August 8, 1996).

[8] *Supra* note 7, at Undertaking 4.

the role of District Committees was addressed in the NASD By-Laws, which provided in part that District Committees shall also serve as the District Business Conduct Committees ("DBCCs") for their respective districts.[9] The undertakings in the 1996 Settlement Order provided, among other things, that DBCCs not be involved in deciding whether or not to institute disciplinary proceedings, and that District Committees not be involved in the review or approval of membership applications.[10] As a consequence, NASD amended its corporate governance documents to comply with these undertakings, including adopting NASD Regulation By-Laws that, among other things, did not provide a role for District Committees in the review or approval of membership applications and eliminated DBCCs.[11]

The By-Laws task the FINRA Regulation Board of Directors with determining the boundaries of the districts and the size of the District Committees.[12] The FINRA Regulation Board has established eleven districts, overseen by FINRA District Offices, which are administratively grouped within five regions:

- West Region—Districts 1 (San Francisco), 2 (Los Angeles), and 3 (Denver and Seattle);
- Midwest Region—Districts 4 (Kansas City) and 8 (Chicago);
- South Region—Districts 5 (New Orleans), 6 (Dallas) and 7 (Atlanta and Boca Raton);
- North Region—Districts 9 (Philadelphia and Woodbridge) and 11 (Boston); and
- New York Region—District 10 (New York City and Long Island).[13]

Today, as provided in the By-Laws, FINRA District Committee members contribute to the regulatory process by, among other things, serving as panelists in disciplinary proceedings in accordance with FINRA Rules; considering and recommending policies and rule changes; and endeavoring to educate FINRA members and others as to the objects, purposes and work of FINRA and FINRA Regulation.[14] The District Committees meet on average twice each year, jointly with the other District Committees in their respective regions. Currently, District Committees are composed of nine members, with the exception of the New York District Committee's twelve. Due to staggered three-year District Committee membership terms, one-third of each District Committee's positions are available for election each year. In some cases, a District Committee may have additional positions to fill if a vacancy has been created by death, resignation, removal or other cause.[15] The District Nominating Committees are composed of five members each, a majority of whom have served on a District Committee, are current or former FINRA Regulation Directors, or current or former FINRA Governors.[16]

Current Nomination and Election Process

As part of the election process, the By-Laws require the Corporate Secretary to provide each District Nominating Committee and District Director annual notice, due on or before June 1 of each year, identifying the members of the District Committees and District Nominating Committees whose terms are expiring within the next calendar year.[17] FINRA's Office of the Corporate Secretary issues an Election Notice announcing the vacancies in all eleven districts and soliciting any interested party to complete and submit a candidate profile form to the applicable FINRA District Director.[18]

Completed candidate profile forms received before the prescribed cutoff date are shared with the District Nominating Committees for review, a process that usually involves candidate interviews.[19] After its review, each District Nominating Committee nominates a slate of candidates for election, which may include an alternate candidate for each position.[20] The District Directors, acting for the District Nominating Committees, notify FINRA's Corporate Secretary of each nominated candidate and the office to which the candidate is nominated (*i.e.,* District Committee member or District Nominating Committee member).[21] Soon after receiving the District Nominating Committees' slates (and, as mandated by the By-Laws, on or before October 1 of each year), FINRA's Office of the Corporate Secretary issues another Election Notice announcing the nominees for upcoming vacancies on the District and the District Nominating Committees and informing members about the petition and election process.[22] If the slate is not contested (*i.e.,* there is one candidate for each position), it is deemed elected without a vote by the district's member firms.[23]

The By-Laws also provide a process whereby a registered person meeting the vacancy requirements may be considered for nomination as an additional ("petition") candidate in a contested election. To be considered for nomination as a petition candidate, such individual must deliver a written notice to the District Director within 14 calendar days of the issuance of the Election Notice of nominated candidates.[24] The Secretary of FINRA Regulation must provide to any such candidate a list, with applicable contact information, of FINRA members eligible to vote in the candidate's district.[25] Within 30 calendar days after the date of mailing of the list to the candidate, the candidate must submit a petition to the District Nominating Committee with signatures from at least ten percent of the FINRA members eligible to vote in his or her district.[26] If a candidate submits a petition with the requisite number of valid signatures by the designated date, he or she is nominated and a contested election is held.[27]

In recent years, FINRA has witnessed a decline in eligible individuals willing to serve on the District or District Nominating Committees or undergo the nomination process. Potential candidates have expressed several reasons for their lack of interest,

[9] *See* NASD By-Laws, Article VIII, Section 2(c) (District Committees and District Business Conduct Committees), amended effective September 4, 1990, prior to the permanent adoption of the NASD Regulation By-Laws effective January 15, 1998 ("The District Committees shall also serve as the District Business Conduct Committees for their respective districts").

[10] *Supra* note 7, at Undertaking 4.

[11] *See* Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997) (File No. SR–NASD–96–29).

[12] *See* FINRA Regulation By-Laws, Article VIII, Section 8.1 (Establishment of Districts) and Section 8.2 (Composition of District Committees).

[13] *See* Schedule A to FINRA Regulation By-Laws.

[14] *See* FINRA Regulation By-Laws, Article VIII, Section 8.2 (Composition of District Committees).

[15] *See* FINRA Regulation By-Laws, Article VIII, Section 8.4 (Filling of Vacancies on District Committees).

[16] *See* FINRA Regulation By-Laws, Article VIII, Section 8.9 (Composition of District Nominating Committees).

[17] *See* FINRA Regulation By-Laws, Article VIII, Section 8.15 (Notice to District Nominating Committee).

[18] *See* FINRA Regulation By-Laws, Article VIII, Section 8.16 (Solicitation of Candidates and Secretary's Notice to FINRA Members).

[19] *See* FINRA Regulation By-Laws, Article VIII, Section 8.17 (District Nominating Committee Slate).

[20] *Supra* note 19.

[21] *See* FINRA Regulation By-Laws, Article VIII, Section 8.18 (Notification of Nomination).

[22] *Supra* note 21.

[23] *See* FINRA Regulation By-Laws, Article VIII, Section 8.19 (Uncontested Election).

[24] *See* FINRA Regulation By-Laws, Article VIII, Section 8.20 (Designation of Additional Candidates).

[25] *See* FINRA Regulation By-Laws, Article VIII, Section 8.21 (List of FINRA Members Eligible to Vote).

[26] *See* FINRA Regulation By-Laws, Article VIII, Section 8.22 (Requirement for Petition Supporting Additional Candidate).

[27] *See* FINRA Regulation By-Laws, Article VIII, Section 8.22 (Requirement for Petition Supporting Additional Candidate) and Section 8.23 (Notice of Contested Election).

including: the reduced role of the District Committees following the 1996 21(a) Report; the perceived difficulties of undergoing the District Nominating Committee process (usually including rigorous interviews) as compared to the signature-collecting process of becoming a petition candidate; and the perception that slate candidates nominated by District Nominating Committees represent the industry less effectively than more "independent" petition candidates.

Proposed Changes to the Nomination Process and Composition of District Committees

Based on the concerns described above, FINRA proposes to eliminate the current nomination and petition process, including eliminating District Nominating Committees in their entirety,[28] and to adopt a more streamlined self-nomination and election process that facilitates member candidacy and fosters representation from Small Firms, Mid-Size Firms and Large Firms (as further described below). As proposed, an individual meeting the qualification requirements of Section 8.2(a) of the By-Laws who is interested in running for election to a District Committee would simply deliver written notice of such intent to the Secretary of FINRA Regulation within 30 calendar days of the Secretary's issuance of the Notice of election to FINRA members.[29] Any individual meeting the qualification requirements would be designated as a candidate without having to undergo the current nominating or petition process.[30] FINRA believes that direct candidate nomination and election by the membership would create a more accessible, transparent and effective election process.

The current By-Laws task District Nominating Committees with endeavoring to secure appropriate and fair representation of the various sections of the district and classes and types of FINRA members within the district.[31] To further this goal, FINRA proposes to require that each District Committee member represent and be directly elected by the applicable classification of members (that are eligible to vote in the district) based on the size of the firm with which he or she is associated. Specifically, candidates would represent one of the following three classifications, as are currently defined in the By-Laws, depending on the size of the firm with which they are associated: Small Firm (up to 150 registered representatives),[32] Mid-Size Firm (151 to 499 registered representatives),[33] or Large Firm (500 or more registered representatives) [34] (the "firm size classifications").[35] As proposed, the Board would determine the composition of District Committees based on firm size classifications, taking into account the composition of the membership and the Board.[36]

To reflect the District Committees' current composition, as well as the representation classifications employed by the FINRA Board of Governors (*i.e.,* Large Firm, Mid-Size Firm and Small Firm Governors), the FINRA Regulation Board has determined that, if the proposed rule change is approved, three-sevenths of the District Committee members would be associated with Small Firms, one-seventh with Mid-Size Firms, and three-sevenths with Large Firms. Each classification of candidates would self-nominate and be subject to the vote of eligible firms in their size classification.[37] Such ratios are generally consistent with those established under the FINRA By-Laws for the election of industry Governors on the Board of Governors and under the FINRA Regulation By-Laws for the election of industry members of the National Adjudicatory Council.[38]

The FINRA Regulation By-Laws currently require that a District Committee member be registered with a FINRA member eligible to vote in the applicable district and work primarily from such member's principal office or a branch office that is located within the district where the member serves on a District Committee.[39] The proposal would clarify that each District Committee member be associated with a FINRA member eligible to vote in the district for District Committee elections and registered in the capacity of a branch manager or principal or denoted as a corporate officer of the FINRA member.[40] This requirement is designed to ensure that District Committee members have requisite experience for purposes of participating in the District Committee meetings.

The FINRA Regulation By-Laws currently limit District Committee members to serving no more than two full three-year terms consecutively. The proposed rule change would limit this provision further, to prohibit consecutive full terms.[41] This requirement would provide for turnover of representation on the District Committees, with the goal of bringing different perspectives and views to them, while still allowing individuals interested in serving multiple terms to do so on a non-consecutive basis.

The proposed rule change would codify that District Committees would meet on a regional level, as has been their practice for several years;[42] as proposed, Schedule A of the By-Laws sets out the five regions and the districts in them. The proposed rule change would also eliminate the requirement for the election of district officers in

[28] *See, e.g.,* proposed deletions of FINRA Regulation By-Laws, Article VIII, Section 8.9 (Composition of District Nominating Committees); Section 8.10 (Term of Office of District Nominating Committee Members); Section 8.11 (Filling of Vacancies for District Nominating Committees); Section 8.12 (Meetings of District Nominating Committees); Section 8.13 (Election of District Nominating Committee Officers); Section 8.14 (Expenses of District Nominating Committees); Section 8.15 (Notice to District Nominating Committee); Section 8.17 (District Nominating Committee Slate); Section 8.18 (Notification of Nomination); Section 8.19 (Uncontested Election); Section 8.20 (Designation of Additional Candidates); Section 8.22 (Requirement for Petition Supporting Additional Candidate); Section 8.23 (Notice of Contested Election). *See also* proposed deletion of the term "District Nominating Committee" in FINRA Regulation By-Laws, Article I (Definitions) and Article IV, Section 4.16 (Communication of Views Regarding Contested Election or Nomination).

[29] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.8 (Self-Nomination of Candidates and Vacancy Appointments).

[30] *Supra* note 29.

[31] *See* FINRA Regulation By-Laws, Article VIII, Section 8.17 (District Nominating Committee Slate).

[32] FINRA Regulation By-Laws, Article I, paragraph (kk).

[33] FINRA Regulation By-Laws, Article I, paragraph (bb).

[34] FINRA Regulation By-Laws, Article I, paragraph (z).

[35] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.2 (Composition of District Committees).

[36] *Supra* note 35.

[37] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.2 (Composition of District Committees), Section 8.9 (FINRA Members Eligible to Vote) and Section 8.17 (Election Results).

[38] *See* FINRA By-Laws, Article I (Definitions) and Article VII, Section 4 (Composition and Qualifications of the Board); FINRA Regulation By-Laws, Article V, Section 5.2 (Number of Members and Qualifications). *See also* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (Order Approving File No. SR–NASD–2007–023).

[39] *See* FINRA Regulation By-Laws, Article VIII, Section 8.2 (Composition of District Committees).

[40] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.2 (Composition of District Committees).

[41] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.3 (Term of Office of District Committee Members).

[42] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.5 (Meetings of District Committees). *See also* proposed FINRA Regulation By-Laws, Article VIII, Section 8.1 (Establishment of Districts and Regions) (authorizing the Board to organize the districts into regions to promote efficiency and sound administration).

current Section 8.6,[43] to allow the flexibility to run a District Committee without officers if that is more efficient in particular districts, especially since the meetings are held on a regional basis and many administrative duties formerly performed by District Committee chairpersons (*e.g.,* preparing meeting agendas and inviting speakers) are currently performed by FINRA staff.[44]

Committee Size Recalibration

The FINRA Regulation By-Laws provide that a District Committee shall consist of between five and 20 members, unless otherwise provided by resolution of the Board, and that the authorized number of members shall be determined from time to time by the Board, with the caveat that any reduction in the authorized number of such members shall not shorten any existing member's term.[45] FINRA is proposing a recalibration of District Committee size consistent with this provision. Specifically, the Board has determined to reduce the size of each District Committee other than the New York District Committee by two, from nine to seven, and to increase the New York District Committee—the only district comprising its entire region—by two, from 12 to 14.

The proposed reduction in the size of most District Committees would address the membership's generally reduced interest in serving on District Committees, as described above, and accommodate the larger number of participants in current regional combined District Committee meetings as compared with former individual District Committee meetings. Both current and former District Committee members and FINRA staff have stated that while the meetings should be held on a regional basis, the number of participants can inhibit productive discussion by all committee members. Under the current structure, the West and South Regions, each composed of three districts, have up to 27 District Committee members attend regional meetings. The Midwest and North Regions, each composed of two districts, have up to 18 District Committee members attend regional meetings. The proposed structure would reduce attendees to 21 in the West and South Regions and 14 in the Midwest and North Regions. This size recalibration would allow each District Committee to meet the proposed 3–1–3 ratio of Small Firm, Mid-Size Firm and Large Firm representation.

In contrast, the proposed increased District Committee size for the New York District would assure a larger pool of District Committee members is available to serve on hearing panels in the district; recognize the fact that, unlike any other district, it comprises its own region entirely; and allow it to meet the proposed 3–1–3 ratio of Small Firm, Mid-Size Firm and Large Firm representation.

The proposed decrease in the authorized number of members from nine to seven on each District Committee (except New York, which would increase from 12 to 14) would not shorten the term of office of any existing District Committee member. The change in District Committee size would be effected over three years, concurrent with the expiration of current District Committee members' terms, so that all current District Committee members would serve out their full terms.[46]

FINRA proposes that, if no individual seeks to be a candidate for a particular District Committee vacancy, the FINRA CEO, or his or her designee, will appoint an individual meeting the qualification requirements of Section 8.2(a), including representing the applicable firm size classification, to the full term of that vacancy.[47] If the FINRA CEO, or his or her designee, is unable to identify or appoint an individual meeting the requirement of representing the applicable firm size classification, he or she may appoint for that vacancy a qualified individual from another firm size classification.[48]

Proposed Elimination of the Advisory Council

The proposed rule change would eliminate the Advisory Council. The Advisory Council is composed of the chairs of each of the District Committees, and is charged to provide input to the Committees and the Board on policy issues, including evaluation of the hearing process and industry practices, and to work closely with the District Committees to develop policy recommendations.[49] The proposed streamlined District Committee structure and directly nominated and elected representation process, together with an initiative by FINRA to refocus District Committee meetings to better seek member views on their districts' needs and responses to FINRA proposals, obviate the need for the Advisory Council. Given the changes proposed, FINRA would be able to realize the goals of the District Committee system, *i.e.,* to seek member views on policy issues and recommendations, directly from the membership without the time and resource expenditures now required of Advisory Council members and FINRA staff.

Other Proposed Changes

The proposed rule change would make several other procedural and administrative changes. It would replace references to "Executive Vice President, Regulatory Policy and Programs" and the "Executive Vice President, Member Regulation" with the "Chief Executive Officer or his or her designee" to recognize organizational changes and provide for flexibility for future organizational changes without the need to amend the By-Laws in the future.[50] It

[43] *See* FINRA Regulation By-Laws, Article VIII, Section 8.6 (Election of District Officers).

[44] The proposed rule change would make a conforming amendment to eliminate the reference to consultation with the Chair of the District Committee regarding the logistics of District Committee meetings. *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.5 (Meetings of District Committees).

[45] *See* FINRA Regulation By-Laws, Article VIII, Section 8.2 (Composition of District Committees).

[46] As noted above, all District Committees currently have nine members, with the exception of the New York District Committee, which has 12 members; one-third of each District Committee's positions are available for election each year. To effect the transition for all District Committees (except New York), and assuming the transition period were to start in 2011, the three current District Committee members whose terms expire in 2011 would be replaced with three newly elected District Committee members, each representing a different firm size classification (Small Firm, Mid-Size Firm and Large Firm); in 2012 and 2013, the three current District Committee members whose terms expire in each of those years would be replaced with two newly elected District Committee members (in each year, one representing a Small Firm and one representing a Large Firm). At the end of the three-year transition period, the District Committee would consist of seven District Committee members with the proposed 3–1–3 ratio of Small Firm, Mid-Size Firm and Large Firm representation. The New York District Committee, which currently has four positions available for election each year, would elect five District Committee members in 2011 and 2012 (in each year, two representing Small Firms, one representing a Mid-Size Firm and two representing Large Firms) and four District Committee members in 2013 (two representing Small Firms and two representing Large Firms). The New York District Committee would then consist of 14 District Committee members, meeting the proposed 3–1–3 ratio of Small Firm, Mid-Size Firm and Large Firm representation.

[47] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.8 (Self-Nomination of Candidates and Vacancy Appointments).

[48] *Supra* note 47. *See also* proposed FINRA Regulation By-Laws, Article VIII, Section 8.4 (Filling of Vacancies on District Committees) (granting comparable authority to the District Committee members to fill vacancies arising prior to the expiration of a District Committee member's term of office, where the CEO or his or her designee determines, pursuant to Section 8.2(d), that such vacancy should be filled).

[49] *See* FINRA Regulation By-Laws, Article VIII, Section 8.7 (Advisory Council).

[50] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.2 (Composition of District

Continued

would also make several changes to the election process to make it more streamlined and efficient, including centralizing it within the Corporate Secretary's office, and diminishing the need for FINRA District office effort. FINRA proposes to permit the Corporate Secretary to develop published procedures for administrative support provided to candidates, which would allow the Secretary's administrative experience with other FINRA elections to inform these procedures.[51] The proposed rule change also would modify the ballot preparation to recognize this centralization within the Corporate Secretary's office and the elimination of the District Nomination Committees.[52] In addition, the proposed rule change would make the vote qualification lists in current Section 8.26 tailored to firm size classification and the applicable list available upon request to a candidate based on the size of the firm with which he or she is associated, since many more candidates are foreseen under the new process, and FINRA anticipates that not all of them would likely need or seek these lists.[53]

The proposed rule change would simplify the tabulation of ballots by the Independent Agent by centralizing it under the Corporate Secretary.[54] In addition, it would recognize that election results would be determined based on those firms in particular firm size classifications.[55] Finally, it would make certain other administrative changes, such as revising the By-Laws to reflect the current address of FINRA Regulation's registered office[56] and eliminating the obsolete reference to the Canal Zone in District No. 7.[57]

As noted in Item 2 of this filing, the effective date of the proposed rule change will be the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[58] which requires, among other things, that FINRA rules must 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. FINRA believes that the proposed rule change will result in a more accessible, transparent and effective District Committee election process and will align the representation of members on the District Committees to follow more closely the industry representation on the FINRA Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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–FINRA–2011–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Cathy H. Ahn, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–011. 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 such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–011 and should be submitted on or before March 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[59]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5080 Filed 3–4–11; 8:45 am]

BILLING CODE 8011–01–P

Committees), Section 8.4 (Filling of Vacancies on District Committees), Section 8.5 (Meeting of District Committees), and Section 8.8 (Self-Nomination of Candidates and Vacancy Appointments).

[51] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.10 (Administrative Support).

[52] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.11 (Ballots).

[53] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.12 (Vote Qualification List).

[54] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.14 (General Procedures for Qualification and Accounting of Ballots).

[55] *See* proposed FINRA Regulation By-Laws, Article VIII, Section 8.17 (Election Results).

[56] *See* proposed FINRA Regulation By-Laws, Article II, Section 2.1 (Location).

[57] *See* proposed Schedule A to the FINRA Regulation By-Laws.

[58] 15 U.S.C. 78*o*–3(b)(6).

[59] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following form has been submitted to the Office of Management and Budget (OMB) for extension of

clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORM—404

Title: Potential Board Member Information.

Need and/or Use: Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

Respondents: Potential board members.

Burden: A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: February 15, 2011.

Lawrence G. Romo,

Director.

[FR Doc. 2011–5034 Filed 3–4–11; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 6, 2011.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Barbara Brannan, Management Analyst, Office of Surety Guarantees, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Office of Surety Guarantees, 202–205–6545, *Barbara.brannan@sba.gov*. Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

SBA's Surety Bond Guarantee (SBG) Program was established to encourage Surety Companies to provide bonding for small contractors. The information collected on these forms is used to evaluate the eligibility of small contractors for the SBG Program.

Title: "Surety Bond Guarantee Assistance."

Description of Respondents: Surety Companies.

Form Number: 990, 991, 994, 994B, 994F, 994H.

Annual Responses: 17,965.

Annual Burden: 1,959.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–5042 Filed 3–4–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Jobs Act Implementation

AGENCY: U.S. Small Business Administration.

ACTION: Notice of public meetings.

SUMMARY: The U.S. Small Business Administration (SBA) announces it is holding a series of public meetings on its implementation of the Small Business Jobs Act. These public meetings will be held in selected cities across the country to broaden the opportunity for public participation with SBA's development and implementation of the procurement, finance, grant, international trade and other program enhancements enacted in the Small Business Jobs Act.

DATES: The meetings will be held on the dates and times specified in the Event Information section of the Supplementary Information below. It is recommended that all attendees register at least one week prior to the scheduled meeting date.

ADDRESSES: The meetings will be held at the locations specified in the Event Information section of the **SUPPLEMENTARY INFORMATION** below. Parties interested in attending a meeting must register by providing the requested registration information at *http://www.sba.gov/jobsacttour.*

FOR FURTHER INFORMATION CONTACT: Andrew D. Cutillo, Office of Government Contracting and Business Development, at (202)-205–6280, or *Andrew.Cutillo@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On Sept. 27, 2010, President Obama signed into law the Small Business Jobs Act (SBJA). The new law provides critical resources to help small businesses continue to drive economic recovery and create jobs including extension of SBA enhanced loan provisions, offering billions more in lending support and tax cuts, and expanding other opportunities, including provisions affecting government contracting programs for small business owners.

SBA will be hosting this Small Business Jobs Act Tour that will cover 13 cities to provide information and receive input on SBJA provisions.

II. Topics and Agenda

While the agenda may vary from city to city, a typical agenda is below. Please visit *http://www.sba.gov/jobsacttour* for updates on each location's agenda.

Time	Title of session
9 a.m.–10 a.m	Opening Keynote, Overview of Small Business Jobs Act and SBA's Mission.
10 a.m.–10:15 a.m	Break.
10:15 a.m.–11:30 a.m	Room 1 Session #1: Small Business Jobs Act provisions affecting Small Business participation in government contracting. Room 2 Lender Roundtable.

Time	Title of session
	Room 3
	Expanding Exporting Opportunities for Small Business.
11:30 a.m.–12:45 p.m	Room 1
	Session #1, Continued.
	Room 2
	Lender Roundtable, Continued.
	Room 3
	Investing in Counseling and Training Services to Support the Growth of Small Business.
12:45 p.m.–1:45 p.m	Break.
1:45 p.m.–3 p.m	Room 1
	Session #2: Small Business Jobs Act provisions affecting Small Business participation in government contracting.
	Room 2
	Opportunities in Accessing Capital.
	Room 3
	Expanding Exporting Opportunities for Small Business.
3 p.m.–4:15 p.m	Room 1
	Session #2, Continued.
	Room 2
	New SBA Loan Programs.
	Room 3
	Investing in Counseling and Training Services to Support the Growth of Small Business.

Please note that the SBA will also include a discussion of Size Standards during the 3 p.m. breakout session at events in San Antonio, TX, San Diego, CA, Chicago, IL, and Washington, DC.

Putting More Capital in the Hands of Small Business Owners

SBA loans continue to be a critical tool for helping small businesses get the capital they need to grow and create jobs. The Small Business Jobs Act made permanent enhancements to SBA loan programs, such as raising the maximum loan sizes of the 7(a) and 504 programs. In addition, temporary provisions in the new law include a Dealer Floor Plan financing pilot as well as a program that allows some owner-occupied businesses to refinance their commercial real estate mortgages using an SBA loan. Beyond the SBJA, SBA is taking several steps to better serve its lending partners and borrowers, to simplify and streamline loan programs, and to improve oversight of SBA lending. Small business owners, prospective and current SBA lenders are especially encouraged to attend, share their ideas with the SBA, and learn more about new tools being offered.

Strengthening Small Businesses' Ability To Compete for and Win Federal Contracts

The Federal government awards hundreds of billions of dollars each year in federal contracts, nearly one-fourth of which goes to small firms. The Small Business Jobs Act contained 19 provisions that will help small businesses compete more effectively for federal contracts and subcontracts. SBA is rolling out these provisions that will help ensure more fairness, more opportunities, and more tools to help match federal agencies with small businesses that provide high-quality products and services. SBA wants to hear from interested parties about how it can effectively roll out new provisions, such as those relating to Multiple Award Contract set asides, subcontracting, Mentor Protégé Programs, and, at select events, its size process. Small business contractors are encouraged to attend, learn more about these new tools, and share their thoughts on improving the environment for small business contracting.

Expanding Resources for Counseling and Training

SBA has at least one District Office in each state, as well as about 14,000 affiliated counselors at Small Business Development Centers, Women's Business Centers and SCORE chapters. The Small Business Jobs Act is helping support these groups in a number of ways. For example, $50 million more is being provided to support the network of about 900 Small Business Development Centers throughout the country. Also, SBA is working with a broad group of counselors to equip them with more tools and information to help small firms start or increase exporting. All small business owners are encouraged to attend and learn more about the knowledge, tools, and contacts that SBA affiliated counselors can help provide.

Expanding Exporting Opportunities for Small Business

Small businesses looking for new opportunities to increase sales and profit, and take advantage of increased demand for high-quality U.S. goods and services, should consider exporting. The Small Business Jobs Act includes exporting resources to help small businesses by making the SBA Export Express pilot loan program permanent, increasing maximum sizes for SBA's three export loan programs, and creating a new State Trade and Export Promotion (STEP) grants pilot program which will provide funds to states to assist small business interested in exporting. See Notice of Grant Opportunities to States: STEP Grant Program, 76 FR 10082 (Feb. 23, 2011). These expanded opportunities also help build upon the goal of doubling exports in the next five years via the National Export Initiative. Small business owners with a current or prospective interest in exporting are especially encouraged to attend.

III. Event Information

Location	Date	Address
Columbus, OH	March 28, 2011, Begins 9 a.m., Ends 4:15 p.m	The Ohio State University, Ohio Union, 1739 N. High St., Columbus, OH 43210.

Location	Date	Address
Miami, FL	March 28, 2011, Begins 9 a.m., Ends 4:15 p.m	Miami Dade College, Wolfson Campus, Chapman Center (Building 3), 300 NE. 2nd Avenue, Miami, FL 33132.
New York, NY	March 30, 2011, Begins 9 a.m., Ends 4:15 p.m	26 Federal Plaza, 6th Floor Conference Room A/B, New York, NY 10278.
Atlanta, GA	March 30, 2011, Begins 9:30 a.m., Ends 4:45 p.m	Loudermilk Center, 40 Courtland Street, NE., Atlanta, 30303.
Boston, MA	April 1, 2011, Begins 9 a.m., Ends 4:15 p.m	O'Neill Federal Building, 10 Causeway Street, Boston, MA 02222.
San Antonio, TX	April 1, 2011, Begins 9 a.m., Ends 4:15 p.m	The Norris Conference Center, 4522 Fredericksburg Road, San Antonio, TX 78201.
Albuquerque, NM	April 11, 2011, Begins 9 a.m., Ends 4:15 p.m	Embassy Suites Albuquerque, 1000 Woodward Place NE., Albuquerque, NM 87102.
San Diego, CA	April 11, 2011, Begins 9 a.m., Ends 4:15 p.m	County Health Services Complex, 3851 Rosecrans St., San Diego, CA 92110.
Denver, CO	April 13, 2011, Begins 9 a.m., Ends 4:15 p.m	Lowry Conference Center, 1061 Akron Wy Bldg 697, Denver, CO 80230.
Seattle, WA	April 13, 2011, Begins 9 a.m., Ends 4:15 p.m	Holiday Inn Seattle-SeaTac International Airport, 17338 International Blvd., Seattle, WA 98188.
Huntsville, AL	April 15, 2011, Begins 9 a.m., Ends 4:15 p.m	Chan Auditorium, College of Business, 801 Sparkman Drive, Huntsville, AL 35899.
Chicago, IL	April 15, 2011, Begins 9 a.m., Ends 4:15 p.m	Citigroup Center Building, 500 West Madison Street, Suite 1150, Chicago, IL 60661.
Washington, DC	TBD	TBD.

IV. Registration and Oral Presentation

Any individual interested in attending and making an oral presentation shall pre-register in advance with SBA. Oral presentations may consist of comments on existing rules and procedures, general questions, or new ideas for the SBA to consider. Presentations will be made in the breakout sessions, pursuant to the format of each session. Based on the number of registrants it may be necessary to impose time limits to ensure that everyone who wishes to speak has the opportunity to do so. Please refer to *http://www.sba.gov/jobsacttour* for registration information. SBA will attempt to accommodate all interested parties.

V. Information on Service for Individuals With Disabilities

Reasonable accommodations will be provided to those who request assistance at least one week in advance of the meeting for which assistance is being requested. For a complete list of meeting dates, locations and points of contact please visit *http://www.sba.gov/jobsacttour.*

Authority: Pub. L. 111–240.

Dated: February 28, 2011.

Ana Ma,

Chief of Staff.

[FR Doc. 2011–5010 Filed 3–4–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0061]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Bureau of the Public Debt (BPD))—Match Number 1038

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire on June 25, 2011.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with BPD.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dawn S. Wiggins,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA with the Bureau of the Public Debt (BPD)

A. Participating Agencies

SSA and BPD.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, terms, and safeguards for the disclosure of savings security data by BPD to us. We will use the data to determine continued eligibility for and/or the correct benefit amount for Supplemental Security Income applicants and recipients who did not report or incorrectly reported ownership of savings securities.

C. Authority for Conducting the Matching Program

The legal authority for us to conduct this matching activity is contained in sections 1631(e)(1)(B), and 1631(f) of the Social Security Act (Act), (42 U.S.C. 1383(e)(1)(B), and 1383(f)).

D. Categories of Records and Persons Covered by the Matching Program

1. Systems of Records

Our relevant system of records (SOR) is the Supplemental Security Income Record and Special Veterans' Benefits System (SSA System No. 60–0103). The full text was last published in the **Federal Register** on January 11, 2006, at 71 FR 1795. The relevant BPD SORs are Treasury/BPD.002, United States Savings Type Securities, and Treasury/BPD.008, Retail Treasury Securities Access Application. These SORs were last published in the **Federal Register** on July 23, 2008, at 73 FR 42906.

2. Number of Records

(a) The file provided by us to BPD will contain approximately 9 million records of individuals for whom we request data for the administration of the SSI program.

(b) BPD will use files that contain approximately 185 million social security numbers (SSNs), with registration indexes, to match our records.

(c) The reply file providing match results to us will contain approximately 886,000 records.

(d) We will furnish BPD with an electronic file containing SSNs extracted from the Supplemental Security Record database. Exchanges for this computer matching program will occur twice a year, in approximately February and August.

3. Specified Data Elements for Definitive Records from BPD .002

a. We will furnish BPD with the SSN and name for each individual when requesting savings-securities registration information.

b. When a match occurs on an SSN, BPD will disclose the following: the denomination of the security, the serial number, the series, the issue date of the security, the current redemption value, and the return date of the finder file.

4. Specified Data Elements for Book Entry Records from BPD .008

a. We will furnish BPD with the SSN and name for each individual when requesting savings-securities registration information. The finder file will contain the SSN associated with the account and report account holdings.

b. When a match occurs on an SSN, BPD will disclose the following: The purchase amount, the account number and confirmation number, the series, the issue date of the security, the current redemption value, and the return date of the finder file.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is June 26, 2011, provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2011–4999 Filed 3–4–11; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2010–0034]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Bureau of the Public Debt (BPD))—Match Number 1304

AGENCY: Social Security Administration (SSA) .

ACTION: Notice of a renewal of an existing computer matching program that will expire on March 31, 2011.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with BPD.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies

involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register** (FR);

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dawn S. Wiggins,

Acting Executive Director, Office of Privacy and Disclosure.

Office of the General Counsel

Notice of Computer Matching Program, SSA With the Bureau of the Public Debt (BPD)

A. Participating Agencies

SSA and BPD.

B. Purpose of the Matching Program

The purpose of this matching program is to set forth the conditions, terms, and safeguards under which BPD will disclose ownership of Savings Securities to us. This disclosure will provide us with information necessary to verify an individual's self-certification of his/her financial status to determine eligibility for low income subsidy assistance in the Medicare Part D prescription drug benefit program established under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173).

C. Authority for Conducting the Matching Program

Section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–114) requires the Commissioner of SSA to verify the eligibility of an individual who seeks to be considered as a low-income subsidy eligible individual under the Medicare Part D prescription drug benefit program and who self-certifies his/her income, resources, and family size.

D. Categories of Records and Persons Covered by the Matching Program

1. Systems of Records

We will provide BPD with a finder file containing social security numbers (SSNs) extracted from the Medicare database. BPD will match the SSNs in the finder file with the SSNs in its Savings Securities registration systems. These records are included under the systems of records Treasury/BPD.002, United States Savings-Type Securities, and Treasury/BPD.008, Retail Treasury Securities Access Application, last published on June 10, 2005 at 70 FR 33942 and 33952, respectively.

We will then match the BPD data with a comparison file compiled of records from our expanded Medicare Database (MDB) File system of records in order to support our administration of the prescription drug subsidy program. The MDB File system of records notice (No.60–0321) was published at 69 FR 77816 on December 28, 2004 and 71 FR 42159–42164 on July 25, 2006. The MDB File is a repository of Medicare applicant and beneficiary information, which collects and maintains information related to Medicare Parts A and B, Medicare Advantage Part C, and Medicare Part D.

2. Number of Records

The number of records matched each year is determined in part by the number of people who file for subsidy for Part D. BPD will perform the automated matching with its computer systems and provide the response file to us as soon as possible. This agreement covers the following matches:

a. Screening for Potential Recipients

This screening will involve an ongoing weekly match with file sizes varying from 13,000 to 140,000 records containing potential applicants and those recipients who notify us of a change.

b. Screening To Confirm Eligibility

To confirm eligibility of individuals receiving Medicare Part D subsidies, an ongoing yearly match of approximately two million recipients each year will be performed.

3. Specified Data Elements for Definitive Records

a. We will furnish BPD with the SSN for each individual for whom Savings Securities registration information is being requested.

b. When a match occurs on an SSN, BPD will disclose the following: The denomination of the security, the serial number, the series, the issue date of the security, the current redemption value, and the return date of the finder file.

4. Specified Data Elements for Book Entry Records

a. We will furnish BPD with the SSN for each individual for whom Savings Securities registration information is being requested.

b. When a match occurs on an SSN, BPD will disclose the following: the purchase amount, the account number and confirmation number, the series, the issue date of the security, the current redemption value, and the return date of the finder file.

E. Inclusive Dates of the Matching Program

The effective date of this matching program is April 1, 2011; provided that the following notice periods have lapsed: 30 days after publication of this notice in the FR and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2011–5016 Filed 3–4–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7355]

Culturally Significant Objects Imported for Exhibition Determinations: "Paris: Life & Luxury"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Paris: Life & Luxury," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los Angeles, California, from on or about April 26, 2011, until on or about August 7, 2011, the Museum of Fine Arts, Houston, Texas, from on or about

September 18, 2011, until on or about December 10, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 28, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–5124 Filed 3–4–11; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS414]

WTO Dispute Settlement Proceeding Regarding China—Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel From the United States

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 February 11, 2011, the United States requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") with the People's Republic of China ("China") concerning countervailing and anti-dumping duties on Grain Oriented Flat-rolled Electrical Steel ("GOES") from the United States. That request may be found at *http://www.wto.org,* in a document designated as WT/DS414/2. 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 May 2, 2011, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2010–0027. 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: Joseph Laroski, Associate General Counsel, Office of the United States Trade Representative; or Joseph Rieras, Assistant General Counsel, Office of the United States Trade Representative. Contact information is: 600 17th Street, NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b)(1) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3527(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the United States has requested a panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). Once it is established pursuant to the panel will hold its meetings in Geneva, Switzerland, and would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

The United States considers that certain measures imposing countervailing duties and anti-dumping duties on GOES from the United States are inconsistent with China's commitments and obligations under the WTO Agreement. The measures are set forth in the Ministry of Commerce of the People's Republic of China ("MOFCOM") Notice No. 21 [2010], including its annexes. These measures appear to be inconsistent with Articles 1, 3.1, 3.2, 3.5, 6.4, 6.5.1, 6.8, 6.9, 12.2, 12.2.2, and Paragraph 1 of Annex II of the Anti Dumping Agreement; Articles 10, 11.2, 11.3, 12.3, 12.4.1, 12.7, 12.8, 15.1, 15.2, 15.5, 22.3, and 22.5 of the Subsidies and Countervailing Measures Agreement; and Article VI of the GATT 1994. On September 15, 2010, the United States requested consultations with China. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS414/1. The United States and China held consultations on November 1, 2010, but the consultations did not resolve the matter.

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–2010–0027. 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–2010–0027 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* Web site, please consult the resources provided on the Web site 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 *http://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 URAA (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 Web site 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 Ward,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2011–5082 Filed 3–4–11; 8:45 am]

BILLING CODE 3190–W1–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS413]

WTO Dispute Settlement Proceeding Regarding China—Certain Measures Affecting Electronic Payment Services

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 February 11, 2011, the United States requested establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") with the People's Republic of China ("China") concerning certain restrictions and requirements maintained by China affecting electronic payment services for payment card transactions and the suppliers of those services. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS413/2. 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 May 2, 2011, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov*, docket number USTR–2010–026. If you are unable to provide submissions to *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: Frank J. Schweitzer, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that it has requested a panel pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). Once it is established, the panel will hold its meetings in Geneva, Switzerland, and would be expected to issue a report on its findings and recommendations within nine months of its establishment.

Major Issues Raised by the United States

On September 15, 2010, the United States requested consultations with China concerning issues relating to certain restrictions and requirements maintained by China affecting electronic payment services for payment card transactions and the suppliers of those services. Electronic payment services involve the services through which transactions involving credit card, debit card, charge card, check card, automated teller machine ("ATM") card, prepaid card, or other similar card or money transmission product, are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. In the financial services sector, as set out in China's Schedule of Specific Commitments on Services annexed to the *Protocol on the Accession of the People's Republic of China,* China undertook both market access and national treatment commitments with respect to these services.

Despite its GATS commitments, China imposes market access restrictions and requirements on service suppliers of other Members seeking to supply electronic payment services in China. China UnionPay ("CUP"), a Chinese entity, is the only entity that China permits to supply electronic payment services for payment card transactions denominated and paid in renminbi ("RMB") in China. China also requires the handling by CUP of all RMB transactions in Macao or Hong Kong using payment cards issued in Mainland China, as well as any RMB transactions in Mainland China using RMB payment cards issued in Hong Kong, China or Macao, China.

In addition, China requires all payment card processing devices at merchant locations, all ATMs, and all point-of-sale ("POS") terminals in China to be compatible with CUP's system and capable of accepting CUP payment cards. China also requires that all acquiring institutions post the CUP logo and be capable of accepting all payment cards bearing the CUP logo. China further requires that all payment cards, including "dual currency" cards, issued in China capable of being used for transactions denominated and paid in RMB bear the CUP logo. These measures do not impose similar requirements regarding non-CUP payment cards or to transactions using non-CUP payment cards. China also requires that all inter-bank transactions involving payment cards be handled through CUP. China prohibits the use of non-CUP payment cards for cross-region or inter-bank transactions.

The United States considers that these measures are inconsistent with China's obligations under GATS Article XVI:1 to accord services and services suppliers of any other Member treatment no less favorable than that provided for in

China's Schedule and that China is maintaining or adopting measures set out in Article XVI:2. The United States also considers that these measures are inconsistent with China's obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers.

In its request for the establishment of a panel, the United States identified the following instruments through which the United States understands that China maintains these measures:

- Measures for the Administration of Bank Card Business by the People's Bank of China (Yinfa [1999] 17), issued on 27 January 1999;
- Circular of the People's Bank of China on Promulgation of Opinions on Implementation of Joint Work in Bank Card Interoperability in 2001 (Yinfa [2001] 37) issued on 19 February 2001;
- Circular on Uniform Use of CUP Logo and its Holographic Label for Anti-counterfeiting by the People's Bank of China (Yinfa, [2001] 57), issued on 13 March 2001;
- Notice of Circulating the Bank Card Connection Business Standard by the People's Bank of China (Yinfa [2001] 76), issued 29 March 2001, including but not limited to the Appendix, Business Practices for the Interoperable Service of Bank Cards
- Opinions on Bank Card Interoperability Related Work in 2002 by the People's Bank of China (Yinfa [2002] 94), issued on 5 April 2002;
- Circular regarding Issues concerning Bank Card Interoperability Related Work by the People's Bank of China (Yinfa [2002] 272), issued on 29 August 2002;
- Circular on Further Improving Bank Card Interoperability Related Work by the People's Bank of China (Yinfa [2003] 129), issued on 2 July 2003;
- Announcement of Clearing Arrangements Provided by Banks in relation to Individuals' Deposits, Exchanges, Bank Card and Remittance in RMB in Hong Kong (PBOC Announcement [2003] 16), issued on 19 November 2003;
- Circular on Regulating the Administration of Foreign Currency Bank Cards by the State Administration of Foreign Exchange Circular (Huifa [2004] 66), issued on 30 June 2004;
- Announcement of Clearing Arrangements Provided by Banks in relation to Individuals' Deposits, Exchanges, Bank Cards and Remittance in RMB in Macao (PBOC Announcement [2004] 8), issued on 3 August 2004;
- Notice of the People's Bank of China concerning Relevant Issues on Accepting and Using Renminbi Bank Cards in Border Areas (Yinfa [2004] 219), issued on 21 September 2004;
- Circular regarding Issues concerning Individual RMB Business Handled by Banks in Mainland China and Banks in Hong Kong and Macao by the People's Bank of China (Yinfa [2004] 254), issued on 28 October 2004;
- Some Opinions of the People's Bank of China, the National Reform and Development Commission, the Ministry of Public Security, the Ministry of Finance, the Ministry of Information Industry, the Ministry of Commerce, the Station Administration of Taxation, China Banking Regulatory Commission and the State Administration of Foreign Exchange on Promoting the Development of Bank Card Industry Some Opinions of the People's Bank of China, the National Reform and Development Commission, the Ministry of Public Security, the Ministry of Finance, the Ministry of Information Industry, the Ministry of Commerce, the Station Administration of Taxation, China Banking Regulatory Commission and the State Administration of Foreign Exchange on Promoting the Development of Bank Card Industry (Yinfa [2005] 103), issued 24 April 2005;
- Guiding Opinions of the People's Bank of China on Regulating and Promoting the Development of Bank Card Acceptance Market (Yinfa [2005] 153), issued on 16 June 2005;
- Notice of the People's Bank of China on the Relevant Issues concerning Strengthening the Administration of Oversea Business Acceptance of Bank Cards (Yinfa [2007] 273), issued on 6 August 2007;
- Notice of the China Banking Regulatory Commission on the Issues Concerning Wholly Foreign-funded and Chinese-foreign Equity Joint Banks in Conducting the Bank Card Business (Yin Jian Fa [2007] 49), issued 6 June 2007;
- Notice of the People's Bank of China, the China Banking Regulatory Commission, the Ministry of Public Security and the State Administration for Industry and Commerce on Strengthening the Safety Management of Bank Cards and Preventing and Combating Bank Card Crimes (Yinfa [2009] 142), issued 27 April 2009;
- The Opinions of the Standing Office of the People's Bank of China on the Circular on Strengthening the Safety Management of Bankcards and Preventing and Fighting Crimes in Bank Cards by the People's Bank of China, the China Banking Regulatory Commission, the Ministry of Public Security and the State Administration for Industry and Commerce (Yinfa [2009] 149), issued 1 August 2009;
- Notice of the State Administration of Foreign Exchange on the Management of Foreign Currency Bank Cards [2010] 53, issued 11 October 2010; and
- The "business specifications" and "technical standards" that are identified in the instruments above, including in Document No. 17, Document No. 57, Document No. 129, and Document No. 49;
- As well as any amendments, or any related implementing measures, as of the date of the panel request.

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–2010–0026. 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 *www.regulations.gov,* enter docket number USTR–2010–0026 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* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The *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 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.

Pursuant to section 127(e) of the URAA (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 *www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site 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 Ward,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2011–5121 Filed 3–4–11; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability of the Finding of No Significant Impact (FONSI) for Actions Related to the Renewal of a Launch Operator License for Delta II Expendable Launch Vehicles at Cape Canaveral Air Force Station, Florida

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

ACTION: Notice of availability of the FONSI.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347 (as amended), Council on Environmental Quality NEPA implementing regulations (40 Code of Federal Regulations [CFR] Parts 1500 to 1508), and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of a FONSI, based on the analysis and findings of the May 1988 United States Air Force (USAF) *Medium Launch Vehicle Environmental Assessment (EA), Cape Canaveral Air Force Station (CCAFS), Florida.* The 1988 EA evaluates the potential environmental impacts of renovating Launch Complex (LC)–17 and other support facilities at CCAFS to support 12 annual launches of the Delta II vehicle. USAF issued a FONSI, which concluded that the environmental impacts associated with their Proposed Action would not significantly impact the quality of the human environment, and therefore the preparation of an Environmental Impact Statement (EIS) was not required. Under the FAA's Proposed Action as stated in the FONSI, the FAA would renew a Launch Operator License to Orbital Sciences Corporation for the continued operation of Delta II expendable launch vehicles at CCAFS. A Launch Operator License would authorize launches of Delta II vehicles over the 5-year term of the license.

In accordance with the requirements of FAA Order 1050.1E, Change 1, paragraph 410, the FAA has independently evaluated the information contained in the 1988 EA and has verified the continued validity of the analysis contained in the EA. The FAA has determined that the 1988 EA sufficiently addresses the concerns of the FAA and complies with FAA requirements for implementing NEPA as stated in FAA Order 1050.1E, Change 1. The FAA has determined that there is no new information or analysis that would require preparation of a new or supplemental EA or EIS according to the CEQ Regulations (40 CFR 1502.9(c)(1)). Therefore, the FAA issues the FONSI concurring with the analysis of impacts and findings in the 1988 EA and formally adopts the EA in compliance with the requirements of 40 CFR 1506.3 to support renewing a Launch Operator License to Boeing for the continued operation of Delta II expendable launch vehicles at CCAFS. The 1988 EA is incorporated by reference and is summarized as necessary in the FONSI.

The FAA has posted the FONSI on the Internet at *http://www.faa.gov/about/office_org/headquarters_offices/ast/.*

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Czelusniak, Environmental Program Lead, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Room 325, Washington, DC 20591, telephone (202) 267–5924; E-mail *daniel.czelusniak@faa.gov.*

Issued in Washington, DC on March 1, 2011.

Michael McElligott,

Manager, Space Systems Development Division.

[FR Doc. 2011–5113 Filed 3–4–11; 8:45 am]

BILLING CODE 4310–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability of the Finding of No Significant Impact (FONSI) for Actions Related to the Renewal of a Launch Operator License for Pegasus Expendable Launch Vehicles at Wallops Flight Facility, Virginia

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

ACTION: Notice of Availability of the FONSI.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347 (as amended), Council on Environmental Quality NEPA implementing regulations (40 Code of Federal Regulations [CFR] parts 1500 to 1508), and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of a FONSI, based on the analysis and findings of the January 2005 National Aeronautics and Space Administration (NASA) *Final Site-Wide Environmental Assessment (EA) for Wallops Flight Facility, Virginia* (hereafter referred to as the 2005 EA). The 2005 EA evaluates the potential

environmental impacts of recurring activities and proposed future actions at Wallops Flight Facility (WFF). Under the Proposed Action in the 2005 EA, NASA would construct new facilities, demolish old facilities, and improve existing facilities at WFF. In addition, NASA would expand operations at WFF while continuing existing operations. Operations activities considered in the 2005 EA included rocket launches of multiple vehicle types, including the Pegasus vehicle, among other flight-related activities. Under the FAA's Proposed Action as stated in the FONSI, the FAA would renew a Launch Operator License to Orbital Sciences Corporation for the continued operation of Pegasus expendable launch vehicles at WFF. A launch operator license would authorize launches of Pegasus vehicles over the 5-year term of the license.

In accordance with the requirements of FAA Order 1050.1E, Change 1, paragraph 410, the FAA has independently evaluated the information contained in the 2005 EA and has verified the continued validity of the analysis contained in the EA. The FAA has determined that the 2005 EA sufficiently addresses the concerns of the FAA and complies with FAA requirements for implementing NEPA as stated in FAA Order 1050.1E, Change 1. The FAA has determined that there is no new information or analysis that would require preparation of a new or supplemental EA or Environmental Impact Statement according to the CEQ Regulations (40 CFR 1502.9(c)(1)). Therefore, the FAA issues the FONSI concurring with the analysis of impacts and findings in the 2005 EA and formally adopts the EA in compliance with the requirements 40 CFR 1506.3 to support renewing a Launch Operator License to Orbital Sciences Corporation for the continued operation of Pegasus expendable launch vehicles at WFF. The 2005 EA is incorporated by reference and is summarized as necessary in the FONSI. NASA has posted the 2005 EA on the internet at *http://sites.wff.nasa.gov/code250/docs/Final%20Site-Wide%20EA.pdf.*

The FAA has posted the FONSI on the internet at *http://www.faa.gov/about/office_org/headquarters_offices/ast/.*

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Czelusniak, Environmental Program Lead, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Room 325, Washington, DC 20591, telephone (202) 267–5924; E-mail *daniel.czelusniak@faa.gov.*

Issued in Washington, DC on March 1, 2011.

Michael McElligott,

Manager, Space Systems Development Division.

[FR Doc. 2011–5104 Filed 3–4–11; 8:45 am]

BILLING CODE 4310–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: April 20, 2011—9:30 a.m. to 4 p.m.

Place: Federal Aviation Administration, 800 Independence Avenue, SW—Round Room (10th Floor), Washington, DC 20591.

Purpose: The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267–8937 or *gloria.dunderman@faa.gov.* Attendees will have to present picture ID at the security desk and be escorted to the Round Room.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on February 24, 2011.

Paul Fontaine,

Director (A), Research & Technology Development.

[FR Doc. 2011–4827 Filed 3–4–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Jackson-Evers International Airport, Jackson, MS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Jackson Municipal Airport Authority for Jackson-Evers International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is February 18, 2011.

FOR FURTHER INFORMATION CONTACT: Jonathan Linquist, Federal Aviation Administration, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, Mississippi 39208–2307, (601) 664–9893.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Jackson-Evers International Airport are in compliance with applicable requirements of Part 150, effective February 18, 2011. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation

submitted by the Jackson Municipal Airport Authority. The documentation that constitutes the "noise exposure maps" as defined in section 150.7 of Part 150 includes: Figure 1–1, Jackson-Evers International Airport and Surrounding Communities; Figure 3–1, Locations of Noise Measurement Sites; Figure 5–1, Existing Airport Diagram; Figure 5–2, Runways 16L/16R Radar and Modeled Flight Tracks for Departures and Arrivals; Figure 5–3, Runways 34L/34R Radar and Modeled Flight Tracks for Departures and Arrivals; Figure 5–4, Runways 16L/16R Radar and Modeled Flight Tracks for Flight Patterns; Figure 5–5, Runways 34L/34R Radar and Modeled Flight Tracks for Flight Patterns; Figure 5–6, Helicopter Radar and Modeled Flight Tracks for Departures and Arrivals; Figure 6–1, Existing Condition (2010) Noise Exposure Map; Figure 6–2, Forecast Condition (2015) Noise Exposure Map; Figure 6–3, Comparison of Existing (2010) and Forecast (2015) Noise Exposure Maps; Table 1–1, Land Use Compatibility with Yearly Day-Night Average Sound Levels; Table 1–2, Part 150 Noise Exposure Maps Checklist; Table 3–1, Summary of Noise Measurement Sites; Table 3–2, Summary of Day-Night Average Sound Level Measurements; Table 5–1, Airport Runway Data; Table 5–2, Aircraft Operations; Table 5–3, Existing Conditions (2010) Modeled Average Daily Aircraft Operations; Table 5–4, Forecast Conditions (2015) Modeled Average Daily Aircraft Operations; Table 5–5, Modeled Runway Use; Table 5–6, Jet Aircraft Model Track Utilization; Table 5–7, Propeller Aircraft Model Track Utilization; Table 5–8, Helicopter Model Track Utilization; and Table 5–9, Pattern Model Track Utilization. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on February 18, 2011.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Jackson, Mississippi, on February 18, 2011.

Rans Black,

Manager, Jackson Airports District Office.

[FR Doc. 2011–5099 Filed 3–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In January 2011, there were nine applications approved. Additionally, four approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: University of Illinois—Willard, Savoy, Illinois.

Application Number: 11–04–C–00–CMI.

Application Type: Impose and use a PFC. PFC LEVEL: $4.50.

Total PFC Revenue Approved in This Decision: $1,359,105.

Earliest Charge Effective Date: March 1, 2011.

Estimated Charge Expiration Date: August 1, 2014.

Class of Air Carriers not Required To Collect PFC's: Non-scheduled/on-demand operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at University of Illinois—Willard Airport.

Brief Description of Projects Approved for Collection at and Use:

Panel repair and replacement taxiway D.
Panel repair and replacement runway 4/22.
General aviation ramp.
Mandatory pavement markings. Airport signage.
Runway guard lights.
Wildlife study.
PFC application development.
Runway deicing equipment.
Security system replacement/upgrade.
Terminal building improvements (Transportation Security Administration operations).
Water quality improvement (fuel tank equipment).
Part 139 emergency communication equipment (radios).
Airfield vault replacement.
Flight information display system. Airport master plan update.
Reconstruct connector to runway 22 and construct taxiway A and B improvements (fillets and tapers).
Security improvements (exit lane monitoring).

Decision Date: January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Gary Wilson, Chicago Airports District Office, (847) 291–7631.

Public Agency: City of LaCrosse, Wisconsin.

Application Number: 11–09–C–00–LSE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,271,917.

Earliest Charge Effective Date: March 1, 2013.

Estimated Charge Expiration Date: January 1, 2016.

Class of Air Carriers not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Runway 3/36 reconfiguration.
Mobile Americans with Disabilities Act lift.
Snow removal equipment.
Finger print equipment.
Runway 18/36 pavement maintenance.
Runway 13/31 pavement maintenance.
PFC administration fees.

Brief Description of Project Partially Approved for Collection and Use: Commercial terminal building upgrades.

Determination: Several proposed components were found to be either ineligible or lacking in justification and, thus, these components did not meet the requirements of § 158.15 and/or § 158.17(c) and were disapproved.

Decision Date: January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Tina Young, Great Lakes Region Airports Division, (612) 713–4352.

Public Agency: County of Chemung, Horseheads, New York.

Applications Number: 11–04–C–00–ELM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,635,941.

Earliest Charge Effective Date: October 1, 2015.

Estimated Charge Expiration Date: December 1, 2020.

Class of Air Carriers not Required To Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Elmira Corning Regional Airport.

Brief Description of Project Approved for Use: Master plan update.

Brief Description of Projects Approved for Collection and Use:

Tractor with snow blower and snow plow.
Airport security and access control upgrades—design.
Airport security and access control upgrades—construction.
PFC application, amendments, and administration.

Brief Description of Withdrawn Projects: Truck—mounted snow blower.

Date of Withdrawal: December 29, 2010.

Land acquisition (Sing Sing Road).

Date of Withdrawal: December 22, 2010.

Decision Date: January 4, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, New York Airports District office, (516) 227–3816.

Public Agency: Williams Gateway Airport, Mesa, Arizona.

Application Number: 11–02–C–00–IWA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $34,555,545.

Earliest Charge Effective Date: February 1, 2013.

Estimated Charge Expiration Date: July 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description o f Projects Approved for Collection and Use:

Construct taxilane L drainage improvements.
Construct taxiway B, phase IV.
Design west terminal expansion, phase I.
Construct west terminal expansion, phase I.
Construct south apron drainage improvements.
Construct Alpha apron expansion, phase II.
Design/construct west terminal parking expansion, phase I.
Airport geographical information system/electronic airport layout plan.
Design/construct west terminal parking expansion, phase II.
Airport master plan update.
Construct taxiway B, phase II.
Improve building (Hangar 31).
Construct taxiway B, phase III.
Construct Sossaman Road parking lots.
Design/construct airport service road.
Acquire aircraft rescue and firefighting vehicle.
Design/construct west terminal expansion, phase II.
Design/construct west terminal expansion, phase III.

Brief Description of Projects Approved for Collection:

Design/construct fuel farm.
Design/reconstruct taxiway P.

Decision Date: January 5, 2011.

FOR FURTHER INFORMATION CONTACT: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

Public Agency: Indian Wells Valley Airport District, Inyokern, California.

Application Number: 11–07–U–00–IYK.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue Approved for Use in This Decision: $309,210.

Charge Effective Date: March 1, 2009.

Estimated Charge Expiration Date: March 1, 2019.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use:

Runway 02/20, taxiway, apron, and access road rehabilitation.
Runway 02/20 reconstruction.
Taxiway Al construction.
Runway 15/33 reconstruction.

Decision Date: January 14, 2011.

FOR FURTHER INFORMATION CONTACT: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

Public Agency: Niagara Frontier Transportation Authority, Buffalo, New York.

Application Number: 10–08–C–00–BUF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,844,244.

Earliest Charge Effective Date: March 1, 2014.

Estimated Charge Expiration Date: June 1, 2014.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Buffalo Niagara International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Construction of aircraft rescue and firefighting command control center upgrades.
Replacement of constant current regulators for airfield lighting circuits.
Purchase aircraft rescue and firefighting safety equipment.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Replace revolving doors with sliding doors in the passenger terminal.
Update airport master plan.
Performance of wildlife hazard assessment.
Two-tiered roadway pavement rehabilitation.

Brief Description of Disapproved Project:

PFC planning and program administration.

Determination: The public agency did not provide adequate justification for the proposed project. Therefore, the project did not meet the requirements of § 158.15 and § 158.17.

Brief Description of Withdrawn Projects:

Installation of low sulfur diesel tank.
Installation of liquid chemical storage tank.

Date of withdrawal: October 12, 2010.
Decision Date: January 14, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: Town of Barnstable, Hyannis, Massachusetts.

Application Number: 11–01–C–00–HYA.

Application Type: Impose and use a PFC.

PFC Level: $2.00.

Total PFC Revenue Approved in This Decision: $2,573,600.

Earliest Charge Effective Date: March 1, 2011.

Estimated Charge Expiration Date: October 1, 2024.

Class of Air Carriers Not Required To Collect PFC's: On-demand air taxi commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Barnstable Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

New terminal building.
PFC application assistance.

Decision Date: January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: City of Duluth, Minnesota.

Application Number: 11–10–C–00–DLH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,639,571.

Earliest Charge Effective Date: November 1, 2011.

Estimated Charge Expiration Date: November 1, 2014.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Duluth International Airport.

Brief Description of Projects Approved for Collection and Use:

Preparation of PFC notice of intent.
Construct passenger terminal replacement: terminal building structure and enclosure (phase 2: bid package 1A).
Construct passenger terminal replacement: terminal building structure and enclosure (phase 2: bid package 1B).

Brief Description of Projects Partially Approved for Collection and Use:

Construct passenger terminal replacement: terminal building structure and enclosure (phase 2: bid package 2).
Construct passenger terminal replacement: terminal building structure and enclosure (phase 2: bid package 3).

Determination: The PFC approved amount for each project was reduced from that requested. The approved amounts were limited to the amounts identified in the public agency's air carrier consultation and public notice processes.

Decision Date: January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airports District Office, (612) 713–4358.

Public Agency: Columbus Regional Airport Authority, Columbus, Ohio.

Applications Number: 10–09–C–00–CMH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $184,864,011.

Earliest Charge Effective Date: April 1, 2013.

Estimated Charge Expiration Date: February 1, 2024.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators when enplaning passengers in service and equipment reportable to FAA on FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Port Columbus International Airport.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Checked baggage screening and install new outbound baggage make-up units.
Replacement of bag claim units 2 thru 5.
Four permanent noise monitoring terminals.
Update pavement management program.
Reimbursement for jet bridges and acquisition and rehabilitation of additional jet bridges (9–14).
PFC program formulation cost.

Brief Description of Projects Approved For Collection and Use at a $4.50 PFC Level:

Storm water detention for Turkey Run.
Acquisition and demolition of properties in new runway protection zone for replacement runway 10R/28L.
Replacement runway obstruction mitigation.
Airport golf course modifications.
Runway 10R/28L replacement and conversion of existing runway 10R/28L to a taxiway.
Demolish on-airport structures.
Noise berm/wall.
Residential sound insulation program phase XI (9–13).

Brief Description of Withdrawn Project: Storm water basin at Outfall Four.

Date of withdrawal: January 21, 2011.
Decision Date: January 28, 2011.

FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airports District Office, (612) 713–4358.

AMENDMENTS TO PFC APPROVALS

Amendment number, city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
08–02–C–02–PIE, Clearwater, FL	12/17/10	$3,323,450	$6,628,510	11/01/11	11/01/12
03–04–C–03–BHM, Birmingham, AL	01/13/11	$9,924,690	$8,650,171	04/01/07	04/01/07
06–06–C–02–BHM, Birmingham, AL	01/13/11	$5,600,000	$5,509,101	10/01/08	10/01/08

AMENDMENTS TO PFC APPROVALS—Continued

Amendment number, city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
08–07–C–01–BHM Birmingham, AL	01/13/11	$15,173,639	$13,682,648	03/01/10	07/01/10

Issued in Washington, DC on February 23, 2011.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2011–4828 Filed 3–4–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request To Release Airport Property at Ellington Field Airport, Houston, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Ellington Field Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before April 4, 2011.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address:

Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76137.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mario C. Diaz, Aviation Director, at the following address:

Mr. Mario C. Diaz, Aviation Director, Houston Airport System, 16930 John F. Kennedy Blvd., Houston, Texas 77032.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Senior Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–652, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0650, Telephone: (817) 222–5614, E-mail: *ben.guttery@faa.gov.* Fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Ellington Field Airport under the provisions of the AIR 21.

On February 7, 2011, the FAA determined that the request to release property at Ellington Field Airport, submitted by the Airport, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than April 4, 2011.

The following is a brief overview of the request:

Ellington Field Airport requests the release of 16.019 acres of non-aeronautical airport property. The land was acquired by the City of Houston via an Indenture dated July 1, 1984, and Deed without Warranty and Bill of Sale dated August 21, 1984. The funds generated by the release will be used to improve the Ellington Field Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the FAA Office listed above or the Houston Airport System Offices at Ellington Field Airport.

Issued in Fort Worth, Texas on February 25, 2011.

Kelvin Solco,

Manager, Airports Division.

[FR Doc. 2011–5093 Filed 3–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0413]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 16 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective March 7, 2011. The exemptions expire on March 7, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On January 10, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 1493). That notice listed 16 applicants' case histories. The 16 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 16 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 16 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, complete loss of vision, macular drusen, central serous retinopathy, optic atrophy, retinal detachment, histoplasmosis, nuclear sclerosis cataract, and prosthesis. In most cases, their eye conditions were not recently developed. Eleven of the applicants were either born with their vision impairments or have had them since childhood. The 5 individuals who sustained their vision conditions as adults have had them for periods ranging from 7 to 27 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 16 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 2 to 44 years. In the past 3 years, 2 of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 10, 2011 notice (76 FR 1493).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (*See* Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 16 applicants, two of the applicants were convicted for a moving violation and none of the applicants were involved in a crash. All the applicants achieved a record of safety while

driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 16 applicants listed in the notice of January 10, 2011 (76 FR 1493).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 16 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

Ms. Tanya Lyons of the Delaware DMV medical section was in favor of granting a Federal vision exemption to Thomas S. Roth, she indicated that he has had a clear safety driving record since he became a CDL license holder in the State of Delaware.

Conclusion

Based upon its evaluation of the 16 exemption applications, FMCSA exempts Michael L. Ballantyne, Terry Brown, Delbert M. Carson, Wingson Chang, Richard C. Dickinson, Richard A. Guthrie, Kennth L. Handy, Thomas J. Ivins, Bryon K. Lavender, Victor M. McCants, William K. Otwell, Donald R. Pointer, Steve A. Reece, Thomas S. Roth, Mark A. Steckmyer, and James M. Tennyson from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: February 25, 2011.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2011–4941 Filed 3–4–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0180; Notice 1]

BMW of North America, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

BMW of North America, LLC (BMW) [1] a subsidiary of BMW AG, Munich, Germany, has determined that certain BMW vehicles equipped with "run-flat" tires do not fully comply with paragraphs S4.3(c) and S4.3(d) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.* BMW filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* dated November 2, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (*see* implementing rule at 49 CFR part 556), BMW has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of BMW's, petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

BMW estimates that approximately 54,200 vehicles equipped with "run flat" tires are affected. The affected vehicle models are certain: Model Year 2008–2011 BMW X5 SAV multipurpose passenger vehicles, manufactured from February 2, 2008 through October 26, 2010; Model Year 2008–2011 BMW X6 SAC multipurpose passenger vehicles, manufactured from September 19, 2008 through October 26, 2010; and 2011 BMW 5–Series, BMW 5–Series Gran Turismo, and BMW 7–Series passenger cars, manufactured from September 1, 2010 through October 26, 2010.

The National Highway Traffic Safety Administration (NHTSA) notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners,

[1] BMW of North America, LLC (BMW) is a vehicle manufacturer incorporated under the laws of the state of New Jersey.

purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the vehicles that have already passed from the manufacturer to an owner, purchaser, or dealer.

Paragraph S4.3 of FMVSS No. 110 requires in pertinent part:

S4.3 Placard. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3 (a) through (g), and may show, at the manufacturer's option, the information specified in S4.3 (h) and (i), on a placard permanently affixed to the driver's side B-pillar. In each vehicle without a driver's side B-pillar and with two doors on the driver's side of the vehicle opening in opposite directions, the placard shall be affixed on the forward edge of the rear side door. If the above locations do not permit the affixing of a placard that is legible, visible and prominent, the placard shall be permanently affixed to the rear edge of the driver's side door. If this location does not permit the affixing of a placard that is legible, visible and prominent, the placard shall be affixed to the inward facing surface of the vehicle next to the driver's seating position. This information shall be in the English language and conform in color and format, not including the border surrounding the entire placard, as shown in the example set forth in Figure 1 in this standard. At the manufacturer's option, the information specified in S4.3 (c), (d), and, as appropriate, (h) and (i) may be shown, alternatively to being shown on the placard, on a tire inflation pressure label which must conform in color and format, not including the border surrounding the entire label, as shown in the example set forth in Figure 2 in this standard. The label shall be permanently affixed and proximate to the placard required by this paragraph. The information specified in S4.3 (e) shall be shown on both the vehicle placard and on the tire inflation pressure label (if such a label is affixed to provide the information specified in S4.3 (c), (d), and, as appropriate, (h) and (i)) may be shown in the format and color scheme set forth in Figures 1 and 2. * * *

(c) Vehicle manufacturer's recommended cold tire inflation pressure for front, rear and spare tires, subject to the limitations of S4.3.4. For full size spare tires, the statement "see above" may, at the manufacturer's option replace manufacturer's recommended cold tire inflation pressure. If no spare tire is provided, the word "none" must replace the manufacturer's recommended cold tire inflation pressure* * *

(d) Tire size designation, indicated by the headings "size" or "original tire size" or "original size," and "spare tire" or "spare," for the tires installed at the time of the first purchase for purposes other than resale. For full size spare tires, the statement "see above" may, at the manufacturer's option replace the tire size designation. If no spare tire is provided, the word "none" must replace the tire size designation;* * *

BMW explains that the noncompliance is that the tire and loading information placards on the affected vehicles incorrectly include a recommended cold tire inflation pressure and size designation for a spare tire. Because the vehicles are equipped with "run-flat" tires and have no spare tire, the word "none," as required by paragraphs S4.3(c) and S4.3(d) is required in place of the spare tire size and the associated recommended cold tire inflation pressure.

BMW argues that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. Vehicle owners are informed via the vehicle Owner's Manual that if "RSC" is stamped on the sidewall of the tire, then the tire is a "run-flat" tire.

2. BMW vehicle owners can contact BMW Roadside Assistance™ representatives by telephone 24 hours/day. These representatives can provide vehicle owners, on a vehicle model and model year basis, with all available tire sizes and specifications for the tires originally mounted on their vehicle, including the installation of "run-flat" tires.

3. For vehicles equipped with BMW Assist,™ passengers can contact BMW Roadside Assistance,™ representatives directly from within the vehicle.[2]

BMW reported that the noncompliance was brought to their attention during inspections of vehicles equipped with "run-flat" tires. On October 26, 2010, BMW realized that the affected vehicles do not conform to FMVSS No. 110.

BMW has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will have compliant labels.

In summation, BMW believes that the described noncompliance of its vehicles to meet the requirements of FMVSS No. 110 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, and should be granted.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: By logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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.). DOT's complete Privacy Act Statement is in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

You may view documents submitted to a docket at the address and times given above. You may also view the documents on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets available at that Web site.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 6, 2011.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

[2] Refer to the BMW petition for specific details on the availability of BMW Assist.™

Issued on: February 4, 2011.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2011–5036 Filed 3–4–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Davis LLP on behalf of Imperial Oil in connection with a regulatory proceeding regarding the shipment of petroleum diluents (Diluent) in the Enbridge Southern Lights Pipeline (ESL) pending before the National Energy Board of Canada, captioned NEB File OF-Tolls-Group2-E242-TFGen 01 01 (WB11–021), for permission to use certain data from the Board's 2008 and 2009 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–5015 Filed 3–4–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before May 6, 2011.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–453–2686 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–453–2265.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms and recordkeeping requirements:

Title: Drawback on Beer Exported.

OMB Control Number: 1513–0017.

TTB Form Number: 5130.6.

Abstract: When taxpaid beer is removed from a brewery and ultimately exported, the brewer exporting the beer is eligible for a drawback (refund) of Federal excise taxes paid. By completing this form and submitting documentation of exportation, the brewer may receive a refund of those taxes.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 5,000.

Title: Application for a Basic Permit under the Federal Alcohol Administration Act.

OMB Control Number: 1513–0018.

TTB Form Number: 5100.24.

Abstract: TTB F 5100.24 is completed by persons intending to engage in a business involving beverage Alcohol operations at distilled spirits plants, bonded wineries, or wholesaling/importing business. The information allows TTB to identify the applicant and the location of the business, and to determine whether the applicant qualifies for a permit.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,600.

Estimated Total Annual Burden Hours: 2,800.

Title: Application for Amended Basic Permit under the Federal Alcohol Administration Act.

OMB Number: 1513–0019.

TTB Form Number: 5100.18.

Abstract: TTB F 5100.18 is submitted by permittees who change their operations in a manner that requires

TTB to issue a new permit or receive a new notice. The information allows TTB to identify the permittee, the changes to the permit or business, and to determine whether the applicant qualifies.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,200.

Estimated Total Annual Burden Hours: 600.

Title: Environmental Information; and Supplemental Information on Water Quality Consideration under 33 U.S.C. 1341(a).

OMB Number: 1513–0023.

TTB Form Numbers: 5000.29 and 5000.30, respectively.

Abstract: TTB F 5000.29 is used to determine whether an activity will have a significant effect on the environment and to determine if a formal environmental impact statement or an environmental permit is necessary for a proposed operation. TTB F 5000.30 is used to make a determination as to whether a certification or waiver by the applicable State Water Quality Agency is required under section 21 of the Federal Water Pollution Control Act (33 U.S.C. 1341(a)). Manufacturers that discharge a solid or liquid effluent into navigable waters submit this form.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Total Annual Burden Hours: 4,000.

Title: Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn from the Market.

OMB Control Number: 1513–0034.

TTB Form Numbers: 5200.7.

Abstract: TTB F 5200.7 is used by persons who intend to withdraw tobacco products and cigarette papers and tubes from the market for which the Federal excise taxes have already been paid or determined. The form describes the products that are to be withdrawn to determine the amount of tax to be claimed later as a tax credit or refund. The form notifies TTB when withdrawal or destruction is to take place since TTB may elect to supervise such action.

Current Actions: We are submitting this information collection request for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 171.

Estimated Total Annual Burden Hours: 1,539.

Title: Offer in Compromise of Liability Incurred under the Provisions of Title 26 U.S.C. Enforced and Administered by the Alcohol and Tobacco Tax and Trade Bureau.

OMB Control Number: 1513–0054.

TTB Form Numbers: 5640.1.

Abstract: TTB F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue Code. If accepted, the offer in compromise is a settlement between the Government and the party in violation, in lieu of legal proceedings or prosecution. TTB F 5640.1 identifies the party making the offer, the violation(s), the amount of offer, and the circumstances concerning the violation(s).

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 40.

Estimated Total Annual Burden Hours: 140.

Title: Usual and Customary Business Records Relating to Denatured Spirits.

OMB Control Number: 1513–0062.

TTB Recordkeeping Requirement Number: 5150/1.

Abstract: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal household products. These records are maintained at the premises of the regulated entity and are routinely inspected by TTB personnel during field tax compliance examinations. These examinations are necessary to verify that all specially denatured spirits can be accounted for and are being used only for purposes authorized by laws and regulations. By ensuring that spirits have not been diverted to beverage use, tax revenue and public safety are protected. There is no additional recordkeeping imposed on the respondent as these requirements are usual and customary business records.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit; and State, Local, or Tribal Government.

Estimated Number of Respondents: 3,430.

Estimated Total Annual Burden Hours: One (1).

Title: Manufacturers of Nonbeverage Products—Records to Support Claims for Drawback.

OMB Number: 1513–0073.

TTB Recordkeeping Requirement Number: 5530/2.

Abstract: The recordkeeping requirements included in TTB REC 5530/2 are part of the system necessary to prevent diversion of drawback spirits to beverage use by maintaining accountability over these spirits. Required source records kept at the manufacturing plant include information about distilled spirits received, gauge records, records of receipts, the identification of the person from whom received, evidence of the taxes paid on the spirits, the date the spirits were used, the quantity and kind used in each product (including usage of Puerto Rican and Virgin Islands spirits for compliance with the Caribbean Basin Initiative), receipt and usage of other ingredients (to validate formula compliance), inventory records, records of recovered alcohol, the quantity of intermediate products transferred to other plants, the disposition of each nonbeverage product produced, and the purchasers (except for retail sales). These elements make it possible to trace spirits using audit techniques, thus enabling TTB officers to verify the amount of spirits used in nonbeverage products and subsequently claimed as eligible for drawback of tax. The record retention requirement for this information collection is 3 years.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 501.

Estimated Total Annual Burden Hours: 10,521.

Title: Proprietors or Claimants Exporting Liquors.

OMB Number: 1513–0075.

TTB Recordkeeping Requirement Number: 5900/1.

Abstract: Distilled spirits, wine, and beer may be exported from bonded premises without payment of Federal excise taxes, or, if the taxes have been paid, the exporter may claim drawback (refund) of the taxes paid. This export drawback allows the manufacturer to recover the amount of the tax paid to the government. Obviously, substantial losses in tax revenues would occur if untaxpaid liquors were allowed to enter the domestic market, or if the government allowed drawback to be claimed on liquors used for domestic consumption. This recordkeeping requirement makes it possible to trace spirits using audit techniques, thus enabling TTB officers to verify the amount of spirits, beer, and wine eligible for exportation without payment of tax or exportation subject to drawback. The retention requirement for this information collection is 2 years.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 120.

Estimated Total Annual Burden Hours: 7,200.

Title: Special Tax Renewal Registration and Return/Special Tax Location Registration Listing.

OMB Number: 1513–0113.

Abstract: The statutory section of chapter 52 of 26 U.S.C. authorizes the collection of an occupational tax from persons engaging in certain tobacco businesses. In the Internal Revenue Code, 26 U.S.C. 5276 requires persons to register and/or pay a special occupational tax before conducting business in certain tobacco categories. TTB F 5630.5R is used both to compute and report the tax, and as an application for registry as required by statute. TTB F 5630.5R is computer generated by TTB with known taxpayer identifying information (*e.g.,* name, trade name, address, employer identification number, *etc.*) along with tax computations reflecting tax class(es), number of business locations, tax rate(s), and total tax due. The taxpayer supplies any inaccurate or incomplete information.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 400.

Estimated Total Annual Burden Hours: 100.

Dated: March 1, 2011.

Gerald M. Isenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2011–5067 Filed 3–4–11; 8:45 am]

BILLING CODE 4831–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entity Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of 1 newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters."

DATES: The designation by the Director of OFAC of the 1 entity identified in this notice pursuant to Executive Order 13382 is effective on February 17, 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 from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background: On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the "Order"), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

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 the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On February 17, 2011, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated 1 entity whose property and interests in property are blocked pursuant to Executive Order 13382.

The additional designee is as follows:

Entity

BANK REFAH KARGARAN (a.k.a. BANK REFAH; a.k.a. WORKERS' WELFARE BANK (OF IRAN)), No. 40 North Shiraz Street, Mollasadra Ave, Vanak Sq, Tehran, Iran; all offices worldwide [IRAN] [NPWMD] [IFSR]

Dated: February 17, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–5056 Filed 3–4–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2007–100

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 Notice 2007–100, Transition Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with section 409(a) in Operation.

DATES: Written comments should be received on or before April 8, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Ralph Terry, at (202) 622-8144, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Ralph.M.Terry@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Transition Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with section 409(a) in Operation

OMB Number: 1545–2086.

Notice Number: Notice 2007–100.

Abstract: This notice sets forth the procedures to be followed by service recipients and service providers in order to correct certain operational failures of a nonqualified deferred compensation plan to comply with section 409A(a). It also describes the types of operational failures that can be corrected under the notice.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: This is an extension of a currently approved collection.

Affected Public: Business or other for-profit institutions, not-for-profit institutions, and individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Average Time per Respondent: 30 min.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 1, 2011.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2011–4996 Filed 3–4–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–142299–01 & REG–209135–88]

Proposed Collection; Comment Request for Regulation Project

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 existing final regulations, REG–142299–01 and REG–209135–88, Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

DATES: Written comments should be received on or before May 6, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Ralph 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: Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

OMB Number: 1545–1672.

Regulation Project Number: REG–142299–01 and REG–209135–88.

Abstract: The regulation applies with respect to the net built-in gain of C corporation property that becomes property of a Regulated Investment Company (RIC) or Real Estate Investment Trust (REIT) by the qualification of a C corporation as a RIC or REIT or by the transfer of property of a C corporation to a RIC or REIT in certain tax-free transactions. Depending on the date of the transfer of property or qualification as a RIC or REIT, the regulation provides that either (1) the C corporation will recognize gain as if it

had sold the property at fair market value unless the RIC or REIT elects section 1374 treatment or (2) the RIC or REIT will be subject to section 1374 treatment with respect to the net recognized built-in-gain, unless the C corporation elects deemed sale treatment. The regulation provides that a section 1374 election is made by filing a statement, signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return for the taxable year in which the property of the C corporation becomes the property of the RIC or REIT. The regulation provides that a deemed sale election is made by filing a statement, signed by an official authorized to sign the income tax return of the C corporation and attached to the C corporation's Federal income tax return for the taxable year in which the deemed sale occurs.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 140.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 70.

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: March 1, 2011.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2011–5003 Filed 3–4–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8834

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 8834, Qualified Electric Vehicle Credit.

DATES: Written comments should be received on or before May 6, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ralph 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: Qualified Electric Vehicle Credit.

OMB Number: 1545–1374.

Form Number: Form 8834.

Abstract: Internal Revenue Code section 30 allows a 10% tax credit, not to exceed $4,000, for qualified electric vehicles placed in service after June 30, 1993. Form 8834 is used to compute the allowable credit. The IRS uses the information on the form to determine that the credit is allowable and has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Pubic: Individuals or households and businesses or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 8 hours, 47 minutes.

Estimated Total Annual Burden Hours: 4,395.

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: March 1, 2011.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2011–5001 Filed 3–4–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8939

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 8939, Allocation of Increase in Basis for Property Acquired From a Decedent.

DATES: Written comments should be received on or before May 6, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ralph Terry, (202) 622–8144, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Ralph.M.Terry@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation of Increase in Basis for Property Acquired From a Decedent.

OMB Number: 1545–2203.

Form Number: Form 8939.

Abstract: Section 6018 of the Internal Revenue Code requires this return to be filed by an executor the fair market value of all property (other than cash) acquired from the decedent is more than $1.3 million; in the case of a decedent who was a nonresident not a citizen of the United States, the fair market value of tangible property situated in the United States and other property acquired from the decedent by a United States person is greater than $60,000; or appreciated property is acquired from the decedent that the decedent acquired by gift within three years of death and a gift tax return was required to be filed on the transfer to the decedent. Section 6018(e) also requires executors who must file Form 8939 to provide the same information to recipients of the property as the executor must provide to the IRS.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit groups, not-for-profit institutions, farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Respondents: 188,000.

Estimated Time per Respondent: 9 hours 11 minutes.

Estimated Total Annual Burden Hours: 1,725,090.

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: March 1, 2011.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2011–4998 Filed 3–4–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8925

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 8925, Report of Employer-Owned Life Insurance Contracts.

DATES: Written comments should be received on or before May 6, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ralph Terry, (202) 622–8144, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Ralph.M.Terry@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Report of Employer-Owned Life Insurance Contracts.

OMB Number: 1545–2089.

Form Number: Form 8925.

Abstract: Form 8925, Report of Employer-Owned Life Insurance Contracts, is used by a policyholder (who is engaged in a trade or business which employs the person insured and who is a direct or indirect beneficiary) to report certain information concerning the number of employees covered by employer-owned life insurance in force on those employees at the end of the tax year.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 16,000.

Estimated Time per Respondent: 4 hours 28 minutes.

Estimated Total Annual Burden Hours: 71,360.

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: March 1, 2011.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2011–5000 Filed 3–4–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Recruitment Notice for the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: Notice of Open Season for Recruitment of IRS Taxpayer Advocacy Panel (TAP) Members.

DATES: March 14, 2011 through April 29, 2011.

FOR FURTHER INFORMATION CONTACT: Shawn Collins at 202–622–1245.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of the Treasury and the Internal Revenue Service (IRS) are inviting individuals to help improve the nation's tax agency by applying to be members of the Taxpayer Advocacy Panel (TAP). The mission of the TAP is to listen to taxpayers, identify issues that affect taxpayers, and make suggestions for improving IRS service and customer satisfaction. The TAP serves as an advisory body to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the National Taxpayer Advocate. TAP members will participate in subcommittees that channel their feedback to the IRS through the Panel's parent committee.

The IRS is seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 300 to 500 hours a year, and a desire to help improve IRS customer service. To the extent possible, the TAP Director will ensure that TAP membership is balanced and represents a cross-section of the taxpaying public with at least one member from each state, the District of Columbia, and Puerto Rico. Potential candidates must be U.S. citizens and must pass an IRS tax compliance check and a Federal Bureau of Investigation (FBI) background investigation. Federally-registered lobbyists cannot be members of the TAP.

TAP members are a diverse group of citizens who represent the interests of taxpayers from their respective geographic locations by providing input from a taxpayer's perspective on ways to improve IRS customer service and administration of the Federal tax system, and by identifying grassroots taxpayer issues. Members should have good communications skills and be able to speak to taxpayers about the TAP and TAP activities, while clearly distinguishing between TAP positions and their personal viewpoints.

Interested applicants should visit the TAP Web site at *http://www.improveirs.org* to complete the on-line application or call the TAP toll free number, 1–888–912–1227, if they have questions about TAP membership. The opening date for submitting applications is March 14, 2011, and the deadline for submitting applications is April 29, 2011. Interviews may be held. The Department of the Treasury will review the recommended candidates and make final selections. New TAP members will serve a three-year term starting in December 2011. (Note: highly–ranked applicants not selected as members may be placed on a roster of alternates who will be eligible to fill future vacancies that may occur on the Panel.)

Questions regarding the selection of TAP members may be directed to Shawn Collins, Director, Taxpayer Advocacy Panel, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 1314, Washington, DC 20224, or 202–622–1245.

Dated: March 1, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–5004 Filed 3–4–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Notice of Hiring or Indemnifying Senior Executive Officers or Directors

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before April 6, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain*.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov,* or on (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the

approval process, we invite comments on the following information collection.

Title of Proposal: Notice of Hiring or Indemnifying Senior Executive Officers or Directors.

OMB Number: 1550–0047.

Form Numbers: 1606; 1624.

Description: 12 U.S.C. 1831i requires OTS to make a determination as to the hiring or appointment of senior executive officers or directors at savings institutions or thrift holding companies. The OTS's determination must be based upon an evaluation of the individual's competence, experience, character, and integrity. The information required by the collection is necessary to make this determination. Without this information, the OTS cannot accomplish the statutory requirement designed to protect the interests of the Deposit Insurance Fund. The OTS has delegated the Regional Director, or his designee, at each Regional Office the authority to approve or deny these requests. They evaluate the individual's educational and professional experience to determine competence in the proposed position. An evaluation of the individual's proprietary interests identifies conflicts of interest that may render such person unsuitable for the position. Finally, information such as an individual's criminal offenses, lawsuits, and related disclosures, enable further evaluation of the individual's integrity and character.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 120.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 280 hours.

Dated: March 2, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–5108 Filed 3–4–11; 8:45 am]

BILLING CODE 6720–01–P

FEDERAL REGISTER

Vol. 76 Monday,

No. 44 March 7, 2011

Part II

Department of Energy

10 CFR Parts 429, 430 and 431
Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429, 430 and 431

[Docket No. EERE–2010–BT–CE–0014]

RIN 1904–AC23

Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE or the "Department") is adopting revisions to its existing certification, compliance, and enforcement regulations for certain consumer products and commercial and industrial equipment covered under the Energy Policy and Conservation Act of 1975, as amended (EPCA or the "Act"). These regulations provide for sampling plans used in determining compliance with existing standards, manufacturer submission of compliance statements and certification reports to DOE, maintenance of compliance records by manufacturers, and the availability of enforcement actions for improper certification or noncompliance with an applicable standard. Ultimately, the provisions being adopted in this final rule will allow DOE to enforce systematically the applicable energy and water conservation standards for covered products and covered equipment and provide for more accurate, comprehensive information about the energy and water use characteristics of products sold in the United States.

DATES: *Effective Dates:* The amendments to Parts 429 (except §§ 429.12 through 429.54), 430 (except Appendix A to Subpart B of Part 430 and Appendix B to Subpart B of Part 430), and 431 are effective April 6, 2011.

The amendments to §§ 429.12 through 429.54 are effective July 5, 2011.

The amendments to Appendix A to Subpart B of Part 430 and Appendix B to Subpart B of Part 430 are effective November 28, 2011.

The incorporation by reference of the standards listed in this rule is approved by the Director of the Federal Register as of April 6, 2011.

ADDRESSES: This rulemaking can be identified by docket number EERE–2010–BT–CE–0014 and/or Regulatory Identification Number (RIN) 1904–AC23.

Docket: For access to the docket to read background documents, or comments received, go to the *Federal eRulemaking Portal* at *http://www.regulations.gov.*

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SUPPLEMENTARY INFORMATION: This final rule incorporates by reference into Part 429 the following industry standards:

- ANSI/AHAM DW–1–1992, American National Standard, Household Electric Dishwashers, approved February 6, 1992, IBR approved for § 429.19.

Copies of ANSI/AHAM DW–1–1992 is available from the Association of Home Appliance Manufacturers, 1111 19th Street, NW., Suite 402, Washington, DC 20036, 202–872–5955, or go to *http://www.aham.org.*

- International Organization for Standardization (ISO)/International Electrotechnical Commission, ("ISO/IEC 17025:2005(E)"), "General requirements for the competence of testing and calibration laboratories", Second edition, May 15, 2005, IBR approved for § 429.104.

Copies of ISO/IEC 17025:2005(E) are available from the International Standards Organziation1, ch. de la Voie-Creuse CP 56 CH–1211 Geneva 20 Switzerland, telephone +41 22 749 01 11, or go to *http://www.iso.org/iso.*

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975, as amended ("EPCA" or, in context, "the Act") sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) [1]

Sections 6299–6305, and 6316 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards (all non-product specific references herein referring to energy use and consumption include water use and consumption; all references to energy efficiency include water efficiency) established for certain consumer products and commercial equipment. (42 U.S.C. 6299–6305 (consumer products), 6316 (commercial equipment)) DOE has promulgated enforcement regulations that include specific certification and compliance requirements. *See* 10 CFR part 430, subpart F; 10 CFR 430.23–25; 10 CFR part 431, subparts B, J, K, S, T, U, and V.

On September 16, 2010, the Department published in the **Federal Register** a Notice of Proposed Rulemaking regarding Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment (September 2010 NOPR). 75 FR 56796. DOE subsequently published two correction notices, which addressed the public meeting date and an omission in the regulatory text. 75 FR 57410 (September 21, 2010) and 75 FR 61361 (October 5, 2010), respectively. A public meeting was held in Washington, DC, on September 30, 2010. The comment period for written submissions was scheduled to close on October 18. In response to multiple requests, DOE extended the comment period to close on October 29, 2010.

The September 2010 NOPR proposed to revise, consolidate and streamline the Department's existing certification, compliance, and enforcement regulations for certain consumer products and commercial and industrial equipment covered under EPCA.

II. Summary of the Final Rule

A. Certification

Today's rule revises the Department's current certification regulations to ensure that the Department has the information it needs to ensure that regulated products sold in the United States comply with the law. Currently, manufacturers of covered consumer products and commercial and industrial equipment must certify, by means of a compliance statement and a certification report, that each basic model meets the applicable energy conservation, water conservation, and/or design standard before distributing it in commerce within the United States. *See* 10 CFR 430.62 (consumer products); 431.327 (metal halide lamp ballast) and 430.371 (certain commercial equipment). As proposed in the September 2010 NOPR, DOE is adopting an annual certification reporting requirement for all covered products and covered equipment. Additional details are discussed below. Such annual filings will provide DOE with comprehensive, up-to-date efficiency information about the regulated products sold in the United States at any given time—a necessary predicate to an effective enforcement program.

DOE believes it is also appropriate to provide more transparency in the certification report itself. In the September 2010 NOPR, DOE proposed to expand the information submitted by manufacturers, including general requirements applicable to all products and product-specific requirements. DOE also proposed to make clear that all non-proprietary certification information will be considered public information. As a result of stakeholder comments, DOE made some modifications to the product-specific information it is collecting and the public disclosure of such information in the final rule. These changes are discussed in more detail below. By requiring additional relevant data that affects the energy or water efficiency of a product to be supplied in the certification report, DOE will be able to more effectively enforce compliance with the conservation standards.

To provide manufacturers with sufficient time to transition to these new certification provisions, the effective date of the certification requirements is 120 days from the publication of the final rule in the **Federal Register**. Each basic model of covered product or covered equipment that has not previously been certified with the Department must be certified on or before July 5, 2011 using DOE's on-line certification tool (*i.e.,* the Compliance Certification Management System or CCMS) and the pre-formatted EXCEL templates. *See https://www.regulations.doe.gov/ccms/* for additional information. For those basic models of covered products or covered equipment that have previously been certified with the Department, manufacturers are required to submit revised certification data pursuant to regulations being adopted as part of today's final rule in accordance with the annual report table in 10 CFR 429.12.

B. Enforcement Testing

The Department is modifying its regulations for enforcement testing to allow the Department to enforce the Federal efficiency standards proactively and fairly based on the circumstances of each case. In particular, today's rule makes three revisions to DOE's approach to enforcement testing that, although relatively minor, will significantly improve the effectiveness of DOE's enforcement program. First, the Department is removing the current regulatory provision that requires DOE to receive a written complaint alleging a violation of the standard before it can perform enforcement testing to determine a model's compliance. EPCA affords DOE with broad enforcement discretion, and DOE must be able to exercise that discretion proactively to ensure compliance and deter violations effectively. Second, today's rule allows the Department to select units for enforcement testing from retail, distribution, or manufacturer sources, depending on the circumstances, to ensure enforcement test results that are as unbiased, accurate, and representative as possible. Finally, the Department recognizes that the current regulatory approach to enforcement testing—involving DOE selected units and third party testing—may be impracticable for low-volume, custom-built products or where adequate laboratory facilities are unavailable. Thus, today's rule adopts an alternative approach to enforcement testing in such exceptional cases—allowing DOE-witnessed testing at the manufacturer's lab and/or reduced sample sizes—to permit effective enforcement testing without imposing unreasonable burdens on manufacturers.

[1] For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were re-designated as parts A and A–1, respectively, in the United States Code.

C. Reorganization

With the exception of electric motors, in the September 2010 NOPR, DOE proposed to move all of the existing certification, compliance, and enforcement regulations currently scattered throughout parts 430 and 431 to a new Part 429. DOE additionally proposed to consolidate similar provisions for both consumer products and commercial and industrial equipment.

In response to DOE's proposed new structure, DOE received several comments from interested parties on its September 2010 NOPR, some of which were organizational in nature. For example, a comment submitted by the National Electrical Manufacturers Association (NEMA) suggested grouping all the regulations that were relevant to a single product in a discrete portion of Part 429. (NEMA, No. 85.1 at p. 2) In response to these comments, and to provide additional clarity to Part 429 requirements, DOE has made the following changes to Part 429 in today's final rule:

- Consolidated general requirements into Subpart A.
- Consolidated all certification requirements into Subpart B, with the creation of product-specific sections for sampling plans and certification requirements. This is intended to simplify the presentation for manufacturers and others who need information on a single product. Also, each of the product-specific sections now specifies the relevant sampling equations to ensure certification requirements are clear;
- Added Appendix D to Subpart B which includes Student's t-distribution values for one-tailed confidence level calculations for product certification;
- Reorganized Subpart C to distinguish between enforcement measures and verification measures; and
- Incorporated a variety of editorial changes addressing certification, sampling plans, and enforcement.

DOE is adopting Part 429 in its entirety today and expects to integrate electric motors into this Part in a subsequent rulemaking.

III. Discussion of Comments

A. Annual Certification Requirement

Existing certification requirements direct most manufacturers of covered consumer products and commercial and industrial equipment to certify, by means of a compliance statement and a certification report, that each basic model meets the applicable energy conservation, water conservation, and/or design standard before distributing it in commerce within the United States. *See* 10 CFR 430.62 (consumer products); 10 CFR 431.36, 430.371 (commercial equipment). In the September 2010 NOPR, DOE proposed moving to an annual certification reporting requirement for each basic model of covered product and covered equipment. Additionally, DOE proposed an annual filing schedule based generally upon the Federal Trade Commission (FTC) schedule for similar product types subject to annual reporting under the FTC's Appliance Labeling Rule. For commercial and industrial equipment, DOE proposed to align similar equipment types with the FTC schedule for consumer products.

Today's rule adopts a mandatory annual certification filing requirement (as opposed to an annual testing requirement) and sets out a reporting schedule aligned as closely as possible with the current FTC schedule for consumer products. Under DOE's self-certification enforcement framework, only products that have been certified to DOE by manufacturers as compliant with the applicable standards can be distributed in commerce in the United States. Annual filings will provide the Department with up-to-date and comprehensive efficiency information about regulated products sold in the United States—a necessary predicate to an effective enforcement program. Recognizing this, many commenters, including the Alliance for Water Efficiency (AWE), Underwriters Laboratories, Inc. (UL), Alliance Laundry Systems LLC (ALS), Northwest Energy Efficiency Alliance (NEEA), Earthjustice, and the Association of Home Appliance Manufacturers (AHAM), supported an annual filing requirement. (AWE, No. 38.1 at p. 3; UL, No. 60.1 at p. 1; ALS, No. 66.1 at p. 1; NEEA, No. 67.1 at p. 2; Earthjustice, Public Meeting Transcript, No. 103 at pp. 42–43; AHAM, No. 98.1 at p. 4) As one commenter put it: "Knowledge of what products are being distributed in commerce at any given time is the foundation of an effective certification and enforcement program. A one-time initial certification of compliance does not provide the needed level of knowledge." (NEEA, No. 67.1 at p. 2)

A few commenters objected to the proposal, arguing that annual filing was not needed and would increase reporting burdens. The International Association of Plumbing and Mechanical Officials (IAPMO) and IAPMO R&T, for example, commented that the Department's existing certification requirements already provide sufficient assurance of compliance. (IAPMO, No. 36.1 at p. 1) Similarly, AO Smith opposed an annual certification requirement, commenting that such a requirement would unduly increase the level of reporting required by manufacturers. (AO Smith, No. 81.1 at p. 2) Although DOE recognizes that annual filing will increase the frequency with which manufactures must file reports, the record reflects that the increase in cost burden will be minimal. As NAMA explained, "annual certification does not cause an extreme economic burden and harm." (NAMA, No. 72.1 at p. 2; *See also* Traulsen, No. 52.1, at p. 4 ("Annual certification should not be a major burden")) DOE also believes that electronic reporting will reduce the burden of preparing certification reports. Accordingly, the Department believes that this minimal increase in cost burden is outweighed by the need to ensure that the Department and the public have accurate and comprehensive efficiency information. In addition, an annual filing establishes a set date for manufacturers to fulfill this reporting obligation, which should allow manufacturers to regularize their annual reporting practices, thereby lowering costs and enhancing compliance.

Several commenters suggested that DOE should impose annual testing requirements in addition to the proposed annual filing requirement. In particular, UL, ALS, the Natural Resources Defense Council (NRDC) and Earthjustice commented that while they are in support of establishing an annual certification requirement, such a requirement should include mandatory re-testing to validate the annual certification submissions, rather than merely re-submission of the original test data. (UL, No. 60.1 at p. 1; ALS, No. 66.1 at p. 2; NRDC, Public Meeting Transcript, No. 103 at p. 39; Earthjustice, Public Meeting Transcript, No. 103 at pp. 43–44) NRDC proposed regular recertification of basic models that would require new laboratory testing of currently produced models and not simply resubmission of old test data from the initial certification. NRDC stated that the frequency of such recertification should depend on product-specific factors as well as a production cycle, and whether there is any change in energy usage above a de minimus threshold. (NRDC, No. 39.1 at p. 2) Earthjustice further contended that since determining when a model has been modified can be very difficult, a re-testing, as opposed to a re-submission, requirement would help to alleviate this problem. (Earthjustice, Public Meeting Transcript, No. 103 at pp. 43–44)

While DOE recognizes these commenters' call for additional testing

after the initial certification to ensure continued compliance, the Department declines to adopt an annual testing requirement whereby manufacturers must annually re-test all certified products and equipment. As several commenters point out, such a requirement would impose considerable burdens on manufacturers. (*See, e.g.,* AHAM, No. 98.1 at p. 4; ALS, No. 66.1 at p. 2; Traulsen, No. 52.1 at p. 4) As AHAM further explains, requiring "costly and time consuming" annual re-certification testing "would likely be detrimental to innovation," and "might threaten the viability to small manufacturers." (AHAM, No. 98.1 at p. 4.) AHAM also pointed out that in light of DOE's additional testing and industry verification programs, the benefit to consumers from manufacturers' retesting certified products would be minimal. DOE agrees that the burdens of such a requirement would likely outweigh the benefits and is not requiring any new or additional testing to be performed as part of the annual filing requirement. It is instead a yearly submission of the ratings for all models a manufacturer has in distribution in that year. As discussed below, DOE continues to consider approaches to verification testing that would require subsequent testing of previously certified products, without an across the board annual re-testing requirement.

With regard to DOE's proposal in the September 2010 NOPR to align the annual certification reporting deadlines with the FTC's schedule, ALS, NEEA, IAMPO, the American Lighting Association (ALA), and AHAM submitted comments supporting harmonization with the FTC's reporting requirements. (ALS, No. 66.1 at p. 1; NEEA, No. 67.1 at p. 2; IAMPO, Public Meeting Transcript, No. 103 at p. 42; ALA, No. 97.1 at p. 1; AHAM, No. 98.1 at p. 4) Specifically, ALA commented that such consolidation of reporting requirements would improve the efficiency and reduce the cost of compliance. (ALA, No. 97.1 at p. 1) Delta Faucet submitted comments requesting that efforts be made to reduce the reporting burden and cost on manufacturers by combining the DOE and FTC reports into one template. (Delta Faucet, No. 94.1 at p. 2) Today's final rule consolidates the Department's certification reporting requirements with FTC's schedule only. DOE will continue to consider consolidating filings with the FTC or other government agencies in a future certification, compliance, and enforcement rulemaking.

B. Revisions to Reporting Requirements

In the September 2010 NOPR, DOE proposed to revise what information must be submitted as a part of a certification filing for DOE to better enforce its conservation standards. Specifically, DOE proposed to standardize to the extent possible the basic information required for certification of all covered products and covered equipment, setting out the basic requirements for every certification filing, followed by product-specific information requirements. DOE also proposed to require manufacturers to submit information related to waivers, exemptions, and approved alternative rating methodologies along with their certification submissions as appropriate. Lastly, DOE proposed to expand the product-specific information it was collecting with respect to each of the covered products and covered equipment to help DOE better understand the underlying attributes of the basic model's efficiency that impact the testing and certification data.

DOE generally received comments on the following issues related to its proposed revisions to the certification reporting requirements: (1) Reporting sample size and total number of tests performed; (2) reporting of testing data; (3) reporting use of an Alternate Rating Method (ARM)/Alternative Efficiency Determination Method (AEDM) or other alternative method of rating; (4) defining "distribute in commerce"; (5) product-specific revisions to reporting requirements. With the exception of the requirement for reporting the total number of tests performed, DOE is adopting all of the revisions to its reporting requirements proposed in the September 2010 NOPR. A discussion of specific stakeholder comments on these issues is presented below.

1. Reporting Sample Size and Total Number of Tests Performed

Under the rule adopted today, manufacturers must report the size of the sample tested, but need not report the number of tests performed. With regard to DOE's proposal to require annual reporting of sample size, DOE received comments in opposition from AHAM and NEEA. (AHAM, No. 98.1 at p. 4; NEEA, No. 67.1 at p. 6) NEEA argued that there are no compelling reasons to require submission of sampling plan information or data as part of certification. (NEEA, No. 67.1 at p. 6) The Department disagrees.

For purposes of certification testing, the determination that a basic model complies with the applicable conservation standard must be based on the sampling procedures, which are now found, by product, in 10 CFR Part 429. The sampling procedures provide that "a sample of sufficient size shall be tested to insure [compliance]." Unless the product-specific regulations specify otherwise, a minimum of two units must be tested to certify a basic model as compliant. This minimum is implicit in the requirement to calculate a mean—an average—which requires at least two values. Under no circumstances is a sample size of one (1) authorized. Manufacturers may need to test more than two samples depending on the variability of their sample. Therefore, the sample size can be an important element when evaluating the compliance of a basic model.

Consequently, the Department believes it is still important to request information regarding the sample size used in calculating the certification values submitted to DOE. As DOE has previously found, *see http://www.gc.energy.gov/documents/certification_samplingplan.pdf,* there is a significant amount of confusion in this area and DOE has attempted to clarify the sampling provisions, while maintaining the same level of tolerances, in the final rule. Sample size information that is submitted with the certification report will allow the Department to better understand how manufacturers are calculating their certified values. In the event the Department requests the test data underlying certification, manufacturers must provide the test data for each sample. DOE strongly encourages manufacturers to maintain records that clearly distinguished between each sample using unique identifiers like serial numbers and that provide a clear summary of how the appropriate statistics were applied to generate the certified ratings.

The September 2010 NOPR also proposed to require that manufacturers report the total number of tests per sample. AHAM, the Air-Conditioning, Heating and Refrigeration Institute (AHRI) and ALS objected to reporting the total number of tests performed in the annual certification report. (AHAM, No. 98.1 at p. 4; AHRI, No. 91.1 at pp. 9–10; ALS, No. 66.1 at p. 2) Specifically, AHAM commented that it failed to see how this information is necessary or useful to DOE. As the commenters suggest, this information may not be as helpful to understanding the certified values since the number of tests performed by unit can vary widely based upon a number of factors, including manufacturing practices and production lots. Therefore, DOE will not require the manufacturer to report the

total number of tests performed per sample. Manufacturers may not use multiple tests of a single unit as separate samples when applying the sampling procedures.

2. Reporting of Testing Data

A number of commenters urged DOE to require that manufacturers report all test data for all covered products and equipment in support of the certified value reported to DOE. (*See, e.g.,* NRDC, No. 80.1 at 4) NEEA stated that it supports the submission of non-regulatory metrics data from which the metric is derived. (NEEA, No. 67.1 at p. 2) Several manufacturers, however, strongly opposed reporting test results as part of the annual certification requirement. (Traulsen, No. 52.1 at p. 4; ALS, No. 66.1 at p. 2; BSH, No. 89.1 at p. 4) Specifically, Traulsen noted that providing such detailed data would compromise its product designs and competitive advantage. (Traulsen, No. 52.1 at p. 4) ALS stated that such a requirement would necessitate a huge undertaking by DOE to manage the submission and recordkeeping of all data for all the covered products under DOE's charge. (ALS, No. 66.1 at p. 2)

The Department did not propose in the September 2010 NOPR to require submission of test data in the certification report, and such a requirement is not part of this final rule. While the Department believes that test data is a key factor in helping the Department understand the certified rating, DOE does not believe it is necessary to collect test data from all manufacturers at this time. Instead, DOE is hoping that by expanding the certification data that the Department is collecting and providing additional clarity in the regulations as to the processes manufacturers must follow to determine the certified ratings DOE will be in a better position to understand the data underlying compliance. Although DOE is not mandating that manufacturers submit test data along with each certification report at this time, the Department's regulations continue to require manufacturers to retain test data records in an easily accessible format and provide them to the Department upon request.

3. Reporting Use of an ARM/AEDM or Other Alternative Method of Rating

From the comments, it appears there is general support for requiring manufacturers to submit information related to waivers, exemptions, and approved alternative rating methodologies along with their certification submissions. (*See, e.g.,* NEEA No. 67.1 at 3) NEEA, for example, strongly supported the requirement that manufacturers report this information as part of the certification process. GE Prolec Distribution Transformers (GE Prolec) commented that, due to high volume designs and volume variations, manufacturers that use an AEDM for certification should have to update the AEDM substantiation each year and include this in the annual recertification process. (GE Prolec, No. 95.1 at p. 4) ABB Inc (ABB) noted that there is no approval process for an AEDM and, as such, the requirement to include the approval date should be removed from the certification report. (ABB, No. 53.1 at pp. 11–12) Currently, the regulations provide for use of an alternative rating method only for residential central air conditioners and heat pumps, commercial heating, ventilation, air-conditioning, and water heating equipment (HVAC and WH), electric motors, and distribution transformers. While ABB is correct that certain products, such as commercial HVAC and WH equipment do not require approval of the AEDM before it is used, other products, like residential central air conditioners and heat pumps, do. Thus, these approvals are product-specific. DOE has clarified this in the final rule, which states that the information should be submitted, if applicable. The product-specific templates, which will be available for use with the new online submission system, will also be product-specific and consistent with DOE's regulations.

DOE also believes that manufacturers need the ability to specify that they have not performed actual testing but have modeled or simulated testing through the use of an ARM or AEDM or have used an alternative testing method authorized through a test procedure waiver, as the certification report itself requires the manufacturer to certify that it has tested the model. Providing alternative rating or alternative testing information in the certification report allows the manufacturer to make a more accurate certification statement to the Department. Similarly, in order to make an accurate certification statement to the Department, a manufacturer needs to identify any basic model that is being certified in accordance with an exception to the applicable standard. Accordingly, DOE adopts this requirement in today's final rule to provide an accurate reflection of the test procedures or exceptions used as a basis for the certification.

4. Defining "distribute in commerce"

EPCA's standards and DOE's certification and compliance requirements apply to covered products and equipment that are "distribute[d] in commerce." A number of commenters requested that the Department adopt a definition of "distribution in commerce" in its regulations. Mitsubishi Electric & Electronics USA, Inc. (MEUS) stated its concern that the definition of "introduction into commerce" is so broad it requires manufacturers to certify before providing information to the distribution base. As a solution, MEUS recommended that DOE de-link certification with "introduce into commerce." (MEUS, No. 86.1 at p. 5) Additionally, NEEA expressed its concern that the definition of "distribute in commerce" would require certification prior to a decision to actually market the product. (NEEA, Public Meeting Transcript No. 67.1 at p. 336) Traulsen commented that DOE should define "distribution in commerce" as a published price. (Traulsen, No. 52.1 at p. 4)

EPCA defines "distribute in commerce" as "to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce." (*See* 42 U.S.C. 6291 (16).) The Department recognizes that products may be imported for prototyping, research, field testing, or trade shows while the product is still being developed or before it may be available to the general public for a price. But the Department's interpretation of this term and the application of the statute's definition will necessarily depend on a particular manufacturer's production practices, business decisions, and the facts and circumstances of a particular case. Therefore, DOE is reluctant to dictate a single point in time for all manufacturers when the product development process stops and when distribution in commerce begins. As such, the Department declines to add a precise definition of "distribution in commerce" into its regulations. Instead, in each case, DOE will look to a number of factors to determine whether a model of a regulated product has been "distributed in commerce." Such factors will include the following:

- Whether units of the model have been sold or offered for sale in exchange for monetary compensation;
- Whether units have been included in marketing material made available to the public (*e.g.,* on Web sites or in catalogs);
- Whether the manufacturer has distributed marketing material that includes a claim or statements regarding the product's efficiency;
- Whether a unit has been shown at trade show; and

• The number of units produced, distributed, imported, and/or sold.

A model must be certified to DOE as compliant with the applicable standard prior to distribution in commerce, but the exact point at which any particular model has, in fact, been distributed in commerce may vary considerably across product types and manufacturers.

5. Product-Specific Revisions to Reporting Requirements

In the September 2010 NOPR, the Department proposed including reporting requirements for products that did not previously have to submit information, including those added to DOE's programs by the Energy Independence and Security Act of 2007. In addition, the Department sought comment on expanding its sampling plans for certification to "features" other than the regulatory metrics. As an example, DOE suggested that the actual storage volume of a residential water heater may be a metric that should be subject to sampling requirements.

Today's rule extends the reporting requirements to all products regulated under EPCA, but does not impose sampling plans for features other than the regulatory metric. The Department's certification requirements are the foundation of DOE's compliance and enforcement framework and will be mandatory for all products regulated by EPCA.

Commenters generally disagreed, however, with the approach of extending the sampling plans beyond the regulatory metrics. For example, AO Smith commented that DOE should only test products for values that are covered in the current regulations, such as energy efficiency. (AO Smith, No. 81.1 at p. 3) Similarly, Bradford White Corporation commented that adding sampling plans and tolerances for other features of products is redundant and burdensome. (BWC, No. 45.1 at p. 2) While DOE is not adopting sampling plans for features other than the regulatory metrics at this time, DOE is expanding its product-specific certification requirements to require this type of information in the certification report.

DOE believes information about features that affect the energy-efficiency of the product is essential for DOE to audit compliance and for consumers to make informed decisions about product purchases. In addition, DOE notes that manufacturers have this information on hand and typically provide it in their marketing materials, on their Web site, or to product retailers. DOE's current regulations already request this type of information for certain products and equipment and requiring this information in the certification report is consistent with DOE's adoption of a more uniform approach to certification. In some instances, product or equipment feature information is necessary to determine how to apply DOE's test procedures. Thus, DOE believes this type of information is essential to any verification testing and enforcement testing that may be conducted by the Department. To help interested parties identify the new product-specific information to be submitted in certification reports, DOE has included this on a product-by-product basis throughout Part 429.

C. Certifying Entities and Third-Party Representation

Current certification regulations allow either the manufacturer or private labeler to submit certification reports and compliance statements for each basic model. DOE proposed, in the September 2010 NOPR, to require that manufacturers be solely responsible for submitting the certification reports to DOE. Under this proposal, the certification burden would be placed on the manufacturer, and not the private labeler, although the manufacturer would still have the option of electing to have its private labeler act as a third-party filer and submit the certification report on the manufacturer's behalf. With regard to third-party filers, DOE proposed in the September 2010 NOPR to make clear in its regulations that it may refuse to accept certification reports from a third party with a history of poor performance. A discussion of comments on this issue is below.

In today's rule, DOE is adopting its proposed requirement that manufacturers be solely responsible for submitting certification reports, which would include manufacturer information, as well as private labeler information and/or brand information, where appropriate. AWE and BWC submitted comments supporting DOE's proposal to hold the manufacturer solely responsible for submitting certification reports to DOE. (AWE, No. 38.1 at p. 2; BWC, No. 45.1 at p. 2) The Department considered NEEA's suggestion that the party responsible for introducing the product into commerce in the U.S. should be responsible for certification, whether that is a manufacturer, third-party private labeler, or an importer. (NEEA, No. 67.1 at p. 3) The Department notes that, pursuant to EPCA, an importer is a manufacturer and is included in DOE's proposal. While NEEA's suggestion has some conceptual appeal, the Department believes that such an approach would create confusion and be difficult to administer as it may be unclear who is the party responsible for introducing the product into commerce in a particular case. (*See, e.g.,* above discussion regarding the definition of distribution in commerce.) Another commenter, the NEMA Motor & Generator Section, argued that DOE should continue to permit the private labeler to submit certification reports on electric motors as the information required is well known by the private labelers. (NEMA, No. 85.1 at p. 23) DOE believes that, in most cases, the manufacturer, rather than the private labeler, is one that tests a model and therefore is in the best position to provide certification information to the Department and to retain the underlying test data as required by the rules. DOE reiterates, however, that under today's rule, a manufacturer may elect to have its private labeler act as a third-party filer and submit the certification report on the manufacturer's behalf.

Commenters generally supported DOE's proposal to continue to allow third parties to submit certification reports to DOE on behalf of the manufacturer, as long as the third party does not have a history of poor performance. (*See, e.g.,* AHAM, No. 98.1 at p. 6; BWC, No. 45.1 at p. 3) The Department notes that although a manufacturer is ultimately responsible for submission of the certification reports to DOE, it is a criminal violation for third parties to make knowingly false statements to the government. AHAM and BSH suggest that DOE notify the manufacturer or private labeler when the third-party it has selected has not met DOE's requirements given that the manufacturer or private labeler is the party that bears the ultimate liability for the report. (AHAM, No. 98.1 at p. 6; BSH, No. 89.1 at p. 4) DOE agrees that manufacturers should be notified in such cases by the third-party certified barred from submitting on behalf of manufacturers. DOE may also publish on its Web site a list of third-party certifiers barred from submitting certification reports. Intertek, UL and Earthjustice requested that DOE provide more specificity regarding when DOE will deem a third-party submitter to have a history of poor performance. (Intertek, No. 88.1 at p. 2; UL, No. 60.1 at p. 2; Earthjustice, No. 83.1 at p. 3) DOE clarifies that there is not a set of specific circumstances that must be met for a third-party certifier to have a history of poor performance. However, in each case, DOE will look at circumstances, such as the number of certification violations involving the

third party, including number of reoccurrences, the scope and type of the violations (*e.g.,* was certain data missing or was there a failure to file altogether), the willingness of a third-party certifier to cooperate with DOE, and any corrective actions taken to prevent recurring problems.

D. Submission of Certification Reports

In the September 2010 NOPR, DOE proposed to remove the certified mail and e-mail options for filing certification data that are currently allowed in DOE's regulations and make electronic submission of certification reports through the Compliance and Certification Management System (CCMS) found at *http://www.regulations.doe.gov/ccms* the sole method of submission. CCMS will have sample templates for all covered products and covered equipment available for manufacturers to use when submitting certification data to DOE.

The Department received few comments on this issue, with the majority of commenters supporting the move to exclusive use of the CCMS for certification. Specifically, NEEA commented that the proposed move to electronic filing for certification will reduce manufacturer compliance burdens and should allow for consistency of filed data from one Federal agency to another (NEEA, No. 67.1 at p. 3). Similarly, GE Prolec supported the CCMS approach, but also noted that there is currently no CCMS template for distribution transformers. (GE Prolec, No. 95.1 at p. 11; Public Meeting Transcript, No. 103 at p. 143) GE Prolec requested that it be able to review and comment on a proposed template for distribution transformers before it is finalized. DOE received one comment from First Co. opposing the use of CCMS as the sole method of certification because it would take time and a significant amount of work for manufacturers. First Co. suggested that the new CCMS only filing requirement should not become effective prior to July 1, 2011, to allow a reasonable period of time before converting to an electronic-only filing system. (First Co., No. 76.1 at p. 2)

DOE believes the availability of electronic filing through the CCMS system should reduce compliance burdens, streamline the process, and provide the Department with needed information in a standardized, more accessible form. This electronic filing system will also ensure that records are recorded in a permanent, systematic way and enable the Department to move towards a public, searchable database. Thus, in this final rule DOE removes the certified mail and e-mail options for filing certification data that are currently allowed in DOE's regulations. DOE notes that the CCMS requires users to apply to use the system by filling out a registration form, signing a compliance statement, and receiving a personal password. Due to the number of user requests the Department expects to receive by the compliance date of the certification requirements being adopted in today's final rule, DOE strongly encourages users to set-up their accounts well in advance of the deadline. In addition, the CCMS templates with the new requirements for all covered products and covered equipment should be online shortly after the publication of today's final rule. The Department also encourages manufacturers, to the extent possible, to fill out these templates in advance of the compliance date in case questions arise.

E. New Basic Model Filing, Basic Model Concept, and Notice of Discontinuance

1. New Model Filing and Basic Model Concept

In addition to the new annual certification requirement discussed above, DOE's September 2010 NOPR retained the existing regulatory requirement that any new basic model be certified before distribution in commerce. The Department explained that this requirement would apply to newly manufactured and produced basic models, as well as models that have been modified in a way that decreases a model's efficiency or increases its consumption and thus constitutes a new basic model. In connection with this requirement, the Department solicited comments on whether, and if so how, the Department should clarify the basic model concept to better identify whether and how energy or water use characteristics of a product may vary across different models in a basic model group. The Department's current regulations provide product-specific basic model definitions, which typically state that models within the same basic model group have "essentially identical" energy or water use characteristics. 10 CFR 430.2; 431.62, 431.172, 431.192, 431.202, 431.222, and 431.292. In the September 2010 NOPR, DOE asked how manufacturers determine that a particular model constitutes a new basic model, the difference in the energy use characteristics a typical change may have on a per product basis, and whether DOE should adopt a regulation requiring that a model be recertified as a new basic model if modifications impact the energy or water characteristics by a given *de minimus* percentage.

In response to DOE's questions, several manufacturers provided detailed product and manufacturer-specific information as to how they determine and make changes to basic model groupings. (*See, e.g.,* Rheem, No. 79.1 at pp. 1–3; First Co., No. 76.1 at p. 1) Others, like NRDC, urged DOE to adopt specific and stringent product-specific thresholds for increases in energy consumption or decreases in energy efficiency that must be deemed a new basic model. (*See, e.g.,* NRDC, No. 80.1 at p. 2)

More generally, commenters recognized the importance of the basic model concept and sought additional clarification on the matter. (*See, e.g.,* AHAM, No. 98.1 at pp. 2–3 (seeking "clear and uniform rules" for "determining that a particular model constitutes a new basic model"); NRDC, No. 80.1 at pp. 2–3) Some commenters offered ideas for adopting a general definition of the basic model concept. Consumers Union, for example, urged DOE to establish that any differences in electrical and mechanical parts and any significant changes in functional volumes, capacity or water usage should be categorized as different basic models. (Consumers Union, No. 74.1 at p. 2) Along similar lines, NRDC suggested that DOE look to California's definition of 'basic model" as a model along with an additional requirement that products within a basic model have similar efficiency and energy performance. (NRDC No. 80.1 at p. 2) NEEA cited California's approach, but also recommended that DOE allow for conservative ratings and simply require that all models in a basic model grouping have the same certified efficiency rating, on the ground that manufacturers certify compliance with a minimum standard rather than a performance level. (NEEA, No. 67.1 at pp. 4–5)

A number of manufacturers and trade associations urged DOE to allow manufacturers to rate their products conservatively, so long as the ratings are supported by the test results and comply with the applicable standard. As Rheem explained, conservative ratings ensure performance for consumers that is the same or better than the rating, while giving manufacturers "the flexibility to address fluctuations in component pricing or availability without the added burden of re-rating an appliance for every change." (Rheem, No. 79.1 at p. 3) Whirlpool similarly noted that manufacturers may rate products conservatively "to allow for natural fluctuation in component

tolerances and similar unit-to-unit variances." (Whirlpool, No. 78.1 at p. 1) Reflecting manufacturers' desire for flexibility, AHAM proposed that, rather than establishing de minimus percentages, DOE should require manufacturers to certify changes to a basic model as a new basic model "when the test results no longer support the rated value," explaining that results support a rated value when they demonstrate higher energy efficiency or lower energy consumption than the rating. (AHAM, No. 98.1 at p. 3) AO Smith advocated for a requirement that basic models have the same critical components and control logic along with a de minimus percentage that reasonably compares to enforcement sampling provisions. (AO Smith, No. 81.1 at pp. 1–2)

Although all of these commenters expressed varying approaches to the basic model concept, there was general agreement that a modification to a model that would increase energy or water consumption—such that testing would no longer support the rated value—should constitute a new basic model that must be certified to DOE. (*See, e.g.,* AHAM, No. 98.1 at pp. 2–3; NRDC, No. 80.1 at pp. 2–3) The existing regulations already require certification of a new basic model if a modification results in an increase in energy or water consumption beyond the rated amount, and DOE is retaining that requirement.

DOE agrees with the comments that the 'basic model' concept is fundamental to the conservation standards regulatory framework. It allows manufacturers to group like models for purposes of fulfilling the Department's certification requirements, thereby reducing the burden placed on manufacturers by streamlining the amount of testing they must do to rate the efficiencies of their products. At the same time, the basic model provides the relevant basis for Departmental enforcement actions, including determinations of non-compliance.

Accordingly, to clarify the basic model concept, today's rule centralizes and aligns the existing product-specific basic model definitions in a general definition, which provides (with some exceptions noted in the regulatory text) that a basic model means "all units of a given type of product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency." Although in some cases, the language of this general definition differs slightly from the precise language of the product-specific definitions, DOE emphasizes that this clarification reflects DOE's intent to maintain the status quo until a future rulemaking. This change is intended to provide a single, uniform definition of the basic model using language that permits what the Department understands to be the current practice—the grouping together of individual models with essentially (but not necessarily exactly) identical energy or water efficiency characteristics.

The Department is not, at this time, adopting threshold de minimus changes that would trigger the creation of a new basic model or otherwise establishing set criteria for what is meant by "essentially identical" characteristics. The record suggests that identifying specific percentages is a complicated matter, particularly given that there may be significant variations among manufacturers and products with respect to basic model groupings. Thus, the Department continues to review the bases for more precise, product-specific limitations on which models can be grouped together as a basic model. DOE hopes to address this in the next phase of the certification, compliance, and enforcement rulemaking and will take all of the comments in the record into account at that time. DOE understands that, in the meantime, today's rule will permit flexibility in determining how manufacturers choose to group individual models with essentially, but not exactly, identical energy or water efficiency characteristics. DOE encourages manufacturers to adopt a reasonable approach to basic model groupings and to certify as a single basic model individual models with only superficial differences, such as product finishes. Furthermore, the Department provides the following guidance on DOE's basic model certification and compliance obligations.

First, all models identified in a certification report as being the same basic model must have the same certified efficiency rating. With this rulemaking, manufacturers may elect to group individual models into basic models at their discretion to the extent the models have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy efficiency, energy consumption, water consumption, or water efficiency. However, the rated efficiency certification and representations of all of the individual models represented by a given basic model must be the same. Additionally, if a manufacturer wishes to change the certified rating of a particular model, this change constitutes the creation of a new basic model that must be certified to the Department.

Second, any individual model that is modified resulting in performance that is less efficient than the rated level when tested in accordance with the DOE test procedures in Parts 430 and 431 and the applicable sampling plans in Part 429 must be re-rated as a new basic model and certified to DOE. Certified ratings must be supported by tested values that are at least as efficient as the rating when the applicable sampling plans in Part 429 are applied.

Third, manufacturers may rate models conservatively, meaning the tested performance of the model(s) must be at least as good as the certified rating, after applying the appropriate sampling plan. The sampling plans are designed to create conservative ratings, which ensures that consumers get—at a minimum—the efficiency indicated by the certified rating. In this final rule, DOE allows manufacturers to use conservative ratings beyond those provided by the sampling plans. If DOE determines that any individual model within a basic model does not meet an applicable conservation standard, however, all models within the basic model group will be deemed non-compliant. Thus, as NEEA explained "the larger the basic model group, the larger the risk associated with a compliance failure." (NEEA, No. 67.1 at p. 5)

Finally, under the certification requirements adopted today, unless otherwise specified, manufacturers must identify in their certification reports the individual models that are included in each basic model. The Department's approach to certification, compliance, and enforcement depends on DOE having information about which individual models are covered by a given basic model.

2. Basic Model Numbering

In the September 2010 NOPR, DOE proposed that manufacturers must designate a new basic model number when an existing model is modified such that a new basic model is created to permit transparency and improve consumer awareness. Several commenters, including AHAM, NEEA, Whirlpool, and ALS, expressed support for DOE's proposal to require a new number for a new basic model so long as a new basic model is created only when test results no longer support the rated value. (*See, e.g.,* ALS, No. 66.1 at p. 1; Whirlpool, No. 78.1 at pp. 1–2; AHAM, No. 98.1 at p. 3; NEEA, No. 67.1 at p. 5) A number of manufacturers, however, objected to the new basic

model number requirement as costly, administratively burdensome, and disruptive to the marketplace. (*See, e.g.,* Traulsen, No. 52.1 at p. 1 (estimating a 25% increase in marketing costs); Delta, No. 94.1 at p. 1 (describing increased burden from updating literature, advertising materials, and installation instructions); and AO Smith, No. 81.1 at p. 1 (emphasizing the stress to their customers from model number changes))

In light of these comments, the Department will not require a new basic model number when a manufacturer creates a new basic model unless DOE has determined that the basic model is non-compliant with the standard. If manufacturers—on their own—seek to certify a new basic model, DOE will not require that they designate new model numbers to avoid unnecessary advertising, marketing, and consumer related costs. But, should DOE determine that a basic model does not comply with the applicable standard, manufacturers cannot certify any of the model numbers included in that basic model using the same model numbers certified in the basic model determined noncompliant. If, for example, a manufacturer wishes to make changes to a noncompliant basic model to bring it into compliance, that modified model(s) must be recertified as a new basic model, with a new model number(s). *See* 10 CFR 429.114(d). We reiterate that, in such cases, the Department is not requiring any particular numbering system or convention, only that it has a new basic model number to distinguish it from the noncompliant basic model. The Department believes that new model numbers are warranted in such cases to prevent consumer confusion and permit the Department to monitor compliance effectively.

We note that designating new model numbers for a new basic model may be prudent in some circumstances even when it is not required by today's rule. DOE enforcement efforts will be based on the basic model number. A manufacturer that increases the efficiency of a model may elect not to recertify it using a new basic model number. If, however, DOE tests an earlier-manufactured unit and determines the basic model to be non-compliant with the standard, the manufacturer will be required to cease distribution of all units of all models listed under that basic model number, even if modifications to the model may have made it compliant over time. Furthermore, we note, as Whirlpool's comment points out, that the FTC has issued a staff opinion stating that the failure to change model numbers when changing the efficiency rating of a product may be considered an unfair and deceptive practice in violation of Federal law. (Whirlpool, No. 78.1, at p. 2 (attaching FTC staff opinion letter))

3. Notice of Discontinuance

In the September 2010 NOPR, the Department proposed to require that manufacturers report a model as discontinued as a part of their annual filing following the date on which production of a model has ceased and it is no longer being sold or offered for sale by the manufacturer or private labeler. Several commenters sought additional clarity with respect to when a model has been discontinued. AHRI members, such as Daikin AC, urged DOE to adopt AHRI's approach, whereby models are discontinued when production has stopped, yet stock remains, and such models remain listed in AHRI's directory for 6 months. (*See, e.g.,* Daikin AC, No. 73.1 at p. 1) Other commenters argued that discontinuance should be defined with respect to when production has ceased and should not refer to commerce. (*See, e.g.,* BSH Home Appliance, No. 89.1 at p. 2; AHAM, No. 98.1 at p. 7) And one commenter suggested that DOE should simply remove all requirements for reporting discontinued models to DOE. (*See* ABB, No 53.1 at p. 8)

Today's rule retains the requirement that manufacturers or certifying parties (*i.e.,* third-party filers acting on behalf of a manufacturer) notify DOE in their annual certification filing when a model is no longer being produced and the manufacturer or private labeler is no longer offering it for sale. EPCA obligates DOE to ensure that all covered products distributed by manufacturers and private labelers in U.S. commerce comply with applicable Federal conservation standards. The reporting requirements for discontinued models—like the certification reporting requirements themselves—provide the Department with necessary information about the products that are being distributed in U.S. commerce and thus, which products are subject to DOE's regulatory regime. As one commenter put it, "knowledge of what covered products are being distributed in commerce at any given time is the foundation of an effective certification and enforcement program." (NEEA, No. 67.1 at p. 2)

The Department's view of when a model is discontinued stems from EPCA's statutory framework. Although DOE understands that it may be easier for manufacturers to track production dates, the relevant information for DOE's compliance and enforcement efforts, and manufacturer or private labeler liability, does not stem from production, but from the distribution of a model in commerce by the regulated entity. Thus, the Department will consider a model to be discontinued when production has ceased and when the manufacturer (including importer) or private labeler is no longer offering the product for sale. To reduce the burden on manufacturers, today's rule no longer requires notification at the time of discontinuance, but rather requires that a model's discontinuance be reported to DOE as a part of the annual filing.

The Department emphasizes, moreover, that whether a model is discontinued depends on whether the manufacturer, importer, or private labeler has ceased production and stopped offering the model for sale. It does not depend upon distributor or retail sales and offerings. EPCA's standards and the Department's reporting obligations regulate manufacturers, importers, and private labelers. The certifying entity will know when it stops offering a model for sale, but would have no way of knowing when distributor or retail stock has been depleted. Thus, in the annual filing, the manufacturer or certifying entity should report basic models which are no longer being produced and that the manufacturer or private labeler is no longer offering for sale.

F. Certification Testing, Generally

Under existing regulations, the sampling procedures for certain consumer products and certain commercial and industrial equipment to be used for certification testing are set forth in sections 430.24, 431.65, 431.135, 431.174, 431.175, 431.197, 431.205, 431.225, 431.265, 431.295, and 431.328. In the September 2010 NOPR, DOE proposed to consolidate existing sampling provisions in Part 429 and establish sampling provisions for the types of consumer products and commercial equipment that do not currently have them. Further, DOE proposed the use of a statistically meaningful sampling procedure for selecting test specimens of consumer products and commercial and industrial equipment, which would require the manufacturer to select a sample at random from a production line and, after each unit or group of units is tested, either accept the sample or continue sampling and testing additional units until a rating determination can be made. DOE did not propose a specific sample size for each product because the sample size is determined by the validity of the sample

and how the mean compares to the standard, factors which cannot be determined in advance.

While DOE has moved the sampling plans for all covered products and covered equipment, except electric motors, to Part 429, DOE is not adopting any changes to the existing tolerances at this time. In this final rule, DOE restructured the presentation of the sampling plan and statistical information and included the Student's t-distribution values to help manufacturers in understanding the process behind calculating the certification values for each product. DOE hopes these changes, which are editorial in nature, provide the additional clarity that interested parties have been seeking regarding DOE's sampling procedures. Table III.1 demonstrates a mapping between the existing location in parts 430 and 431 and the future location in part 429 of the sampling plans that manufacturers apply to the test data in order to generate their certified ratings.

TABLE III.1—CURRENT AND FUTURE LOCATIONS OF THE PROVISIONS FOR STATISTICAL SAMPLING PLANS FOR CERTIFICATION TESTING

Product type	New regulation citation in final rule	Existing regulation citation
Residential refrigerators, refrigerator-freezers and freezers	10 CFR 429.14	10 CFR 430.24(a)–(b).
Room air conditioners	10 CFR 429.15	10 CFR 430.24(f).
Central air conditioners and heat pumps	10 CFR 429.16	10 CFR 430.24(m).
Residential water heaters	10 CFR 429.17	10 CFR 430.24(e).
Residential furnaces	10 CFR 429.18	10 CFR 430.24(n).
Dishwashers	10 CFR 429.19	10 CFR 430.24(c).
Residential clothes washers	10 CFR 429.20	10 CFR 430.24(j).
Residential clothes dryers	10 CFR 429.21	10 CFR 430.24(d).
Direct heating equipment	10 CFR 429.22	10 CFR 430.24(g) and 10 CFR 430.24(o).
Conventional cooking tops, conventional ovens, microwave ovens	10 CFR 429.23	10 CFR 430.24(i).
Pool heaters	10 CFR 429.24	10 CFR 430.24(p).
Fluorescent lamp ballasts	10 CFR 429.26	10 CFR 430.24(q).
General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.	10 CFR 429.27	10 CFR 430.24(r).
Faucets	10 CFR 429.28	10 CFR 430.24(s).
Showerheads	10 CFR 429.29	10 CFR 430.24(t).
Water closets	10 CFR 429.30	10 CFR 430.24(u).
Urinals	10 CFR 429.31	10 CFR 430.24(v).
Ceiling fans	Design standard. Not applicable.	
Ceiling fan light kits	10 CFR 429.33	10 CFR 430.24(w) and 10 CFR 430.24(x).
Torchieres	Design standard. Not applicable.	
Bare or covered medium base compact fluorescent lamps	10 CFR 429.35	10 CFR 430.24(y).
Dehumidifiers	10 CFR 429.36	10 CFR 430.24(z).
Class A external power supplies	10 CFR 429.37	10 CFR 430.24(bb).
Battery Chargers	10 CFR 429.39	10 CFR 430.24(aa).
Candelabra base incandescent lamps and intermediate base incandescent lamps.	10 CFR 429.40	New per EISA 2007.
Electric motors	No change. (10 CFR 431.17)	
Commercial refrigerators, freezers, and refrigerator-freezers	10 CFR 429.42	10 CFR 431.65.
Commercial heating, ventilating, air-conditioning (HVAC) equipment	10 CFR 429.43	10 CFR 431.173 through 10 CFR 431.175.
Commercial water heating (WH) equipment	10 CFR 429.44	10 CFR 431.173 through 10 CFR 431.175.
Automatic commercial ice makers	10 CFR 429.45	10 CFR § 431.135.
Commercial clothes washers	10 CFR 429.46	New per EISA 2007.
Distribution transformers	10 CFR 429.47	10 CFR 431.197.
Illuminated exit signs	10 CFR 429.48	10 CFR 431.205.
Traffic signal modules and pedestrian modules	10 CFR 429.49	10 CFR 431.225.
Commercial unit heaters	Design standard. Not applicable.	
Commercial pre-rinse spray valves	10 CFR 429.51	10 CFR 431.265.
Refrigerated bottled or canned beverage vending machines	10 CFR 429.52	10 CFR 431.295.
Walk-in coolers and walk-in freezers	Design standard. Not applicable.	
Metal halide lamp ballasts and fixtures	10 CFR 429.54	10 CFR 431.328

DOE sought comment on a variety of issues relating to sampling plans in the September 2010 NOPR. DOE is continuing to consider further changes to the sampling plans for certification testing of all consumer products, including: (1) Changes to the product-specific coefficients and the rationale for such changes; (2) whether DOE should continue to have different sampling plans for certification testing and enforcement testing; and (3) whether DOE should expand the submission of data requirements in the certification section to include test data and the details of the sampling procedures used for making representations of and certifying compliance with the energy and water use or efficiency. DOE will consider all of the comments submitted as part of this record as it continues any potential revisions in the next certification, compliance, and enforcement rulemaking.

G. Certification Testing Specific to Commercial HVAC and WH Equipment, Including the Use of AEDMs and VICPs

In the September 2010 NOPR, DOE proposed that one set of sampling procedures be used for certification testing of all types of commercial air-conditioning and water heating equipment (HVAC and WH) and for verification of the AEDM, regardless of participation in a voluntary industry certification program (VICP). DOE further proposed to allow all manufacturers of commercial HVAC and WH equipment, irrespective of participation in a VICP, to use both in-house testing facilities and independent laboratories at the manufacturer's discretion for certification testing.

In response to DOE's proposals, AHRI objected to the application of the more stringent non-VICP regulations to VICP participants. Specifically, AHRI stated that the certification testing requirements for VICPs should remain unchanged because changing them would actually be an advantage to those manufacturers that do not participate in a VICP. (AHRI, No. 91.1 at p. 8)

DOE does not agree with AHRI and is adopting its approach as proposed in the September 2010 NOPR. DOE believes that fair and equal treatment of all manufacturers of commercial HVAC and WH equipment is important regardless of participation in certification programs. While DOE recognizes that participation in industry programs can provide invaluable benefits to manufacturers, DOE does not believe the regulations for certification testing should be differentiated based on this factor. Certification sampling plans, which are applied to the certification testing results, have been established to capture the variances in manufacturing processes, testing methods, and materials. DOE does not believe these factors are influenced by participation in a VICP. As such, DOE is adopting identical provisions, which use certain provisions from the existing regulations, for both non-VICP and VICP participants.

H. Records Retention and Confidentiality

1. Records Retention by Manufacturers

In the September 2010 NOPR, DOE proposed to establish a record retention requirement for certification reports that would require the reports to be retained by the manufacturer as long as the model is being distributed in commerce and, for discontinued models, for two years from the date that production of a basic model has ceased and is no longer being distributed by the manufacturer. This requirement would be in addition to the records retention requirement for underlying certification test data, which existing regulations require manufacturers to maintain for two years. Records must be maintained such that they are readily accessible for review by DOE upon request.

In response to this proposal, BSH recommended that DOE strike the language proposed in the September 2010 NOPR requiring manufacturers to retain certification records for as long as the model is being distributed in commerce. Instead, BSH suggested that DOE simply state that records should be retained for two years from the date production ceased. (BSH, No. 89.1 at p. 4)

Although we recognize the date on which production ceases may be readily available to manufacturers, the Department's regulatory regime centers on the distribution of covered products in commerce, rather than manufacturers' production schedules. Thus, the Department is adopting in this final rule the requirement that certification records be retained for two years from the date that the manufacturer or certifying entity notified DOE that the basic model is no longer being distributed in commerce. As discussed above, the Department views a model as discontinued when the entity that certified the basic model (or the party represented by a third-party certifier) is no longer offering the model for sale. Accordingly, under today's rule, records must be retained for two years from the date of that submission. This approach creates a specific date known to both manufacturers and the Department and requires manufacturers to retain records for models in the distribution chain for a reasonable period of time after they are discontinued.

DOE also clarifies that, under its maintenance of records requirement, a manufacturer must retain the certification records, including test reports, which underlie the *each* certification of a model. As an example, if a basic model is certified to DOE on April 1, 2011, the test report underlying that certification report must be retained such that it can be provided to the Department upon request. A test report generated at a later date will not be sufficient. If the basic model is recertified to DOE on April 1, 2012, based on a different test report, the new test report underlying that certification report must be retained, in addition to the certification report underlying the 2011 certification.

2. Confidentiality of Information

In the September 2010 NOPR, DOE proposed to clarify in its regulations that the following information submitted pursuant to the certification requirements is considered public record: The manufacturer's name, brand name, model number(s), and all of the product-specific information submitted on the certification report. In addition, the Department retained the current approach whereby certifying entities seeking to withhold other information submitted to the Department from public disclosure must provide redacted copies at the time of submission.

In response, a number of commenters expressed strong support for public access to certification data. (*See, e.g.,* AWE, No. 38.1 at p. 2; NRDC, No. 80.1 at p. 6, NEEA, No. 67.1 at p. 3; Earthjustice, No. 83.1 at p. 2) As one commenter explained: "Providing the public with a ready means to access efficiency testing results strengthens the incentive for manufacturers to follow the law and helps ensure that they will be held accountable if they failed to meet efficiency standards." (*See* Lish, No. 58.1 at p. 2) Several commenters encouraged DOE to establish a public online database as the repository for all product and equipment information to increase transparency and public access. (*See, e.g.,* NRDC, No. 80.1 at p. 6; NEEA, No. 67.1 at p. 3, First Co., No. 76.1 at p. 3) First Company, for example, offered "strong support for the development of a single DOE/FTC list of certified equipment that is published and publicly available on the DOE Web site," that would include certification reports and notices of discontinuance. (First Co., No. 76.1 at p. 3)

As for the specific information to be considered as a matter of public record, several parties objected to making public the business relationship between a manufacturer and private labeler of a covered product. Delta Faucet, for example, commented that certification information related to private labelers should be segregated and kept confidential due to concerns for contracting with potential customers and release of such information to competitors. (Delta, No. 94.1 at p. 1) Similarly, AHAM recognized that who manufactures a privately labeled product "may be valid and valuable information to DOE as a regulator," but that this information "is not publicly known and, in many cases, would harm companies' competitive postures if * * * such arrangements were disclosed." (AHAM, No. 98.1 at p. 6) First Company suggested that, to avoid consumer confusion, only the following information should be made public for central air conditioners and heat pumps: "manufacturer name, private labeler name, brand name, basic model number, individual model numbers covered by that basic model, capacity, SEER and HSPF (if applicable) of the model." (First Co., No. 76.1 at p. 3)

AHAM further opposed making CT(l), CT(m) and standard temperature sensor location information for refrigerators, refrigerator-freezers, and freezers available to the public because they would reveal confidential information. (AHAM, No. 98.1 at p. 6) AHAM also asserted that certification information should only be made public once the product is released into commerce. AHAM believes that releasing such information prior to the product's release will deflate product launches and release information to competitors before it is otherwise known. (AHAM, No. 98.1 at pp. 6–7)

The Department believes that making data accessible to the public provides increased transparency and accountability to the Department's regulatory regime. At the same time, the Department recognizes that certain information may be confidential in nature and exempt by law from public disclosure. To balance these interests, the final rule adopts the following framework for addressing the public disclosure of information submitted to DOE under Part 429, while protecting valid claims of confidential business information.

First, certain categories of certification information will be considered a matter of public record that DOE intends to make available to the public on its Web site. The Department is developing a public, searchable database that will allow the public ready access to certain certification information for covered products. This certification database is still being developed, and the Department hopes to make it available to interested parties in the coming year. While this will be a DOE database, we are continuing to work with FTC and EPA on establishing a consolidated Federal database of energy and water efficiency information.

Using this database, the Department intends to publicize the following certification information for covered products: The brand name, model number(s), and product-specific certification information for which no confidentiality concerns have been raised. With respect to manufacturer and private labeler information, we understand from the comments that there may be heightened competitive sensitivity attached to the identity of manufacturers and private labelers of certain products. We also note that the FTC has chosen not to publicize this information on its Web site. In recognition of this, the Department will follow the FTC's approach and publicize brand information in lieu of information that reveals business relationships between manufacturers and private labelers. Although DOE has decided not to include the manufacturer and brand relationship on the public database, the Department still requires this information be submitted as part of the certification report to the Department and it will be subject to the confidentiality provisions outlined below.

DOE also intends to publish in the public database product-specific information that is already available or is readily available, such as the energy or water ratings and volume measurements. Though some of this information is technical, no party has deemed it proprietary and it will increase the accountability of manufacturers' self-certification and DOE's compliance and enforcement activities. DOE will not publicize the CT(l), CT(m) and standard temperature sensor location for refrigerators and freezers in light of the concerns that this information would reveal design details of the control mechanisms of a product that manufacturers treat as confidential. All other product-specific certification information will be made publicly available.

Once the database is available, these public categories of certification information will be posted promptly upon receipt and remain available until DOE receives a notice of discontinuance. With respect to AHAM's concerns about the posting of information prior to product launch, we note that manufacturers can wait to file a certification report until a model is about to be distributed in commerce. Furthermore, DOE believes that instances in which the entirety of a certification filing must be kept confidential will be exceedingly rare. Should such instances occur, manufacturers should contact DOE, in advance, and provide a full explanation of the extenuating circumstances justifying such confidential treatment.

Second, for all other information submitted pursuant to Part 429, today's rule provides a mechanism for submitting parties to claim confidentiality on a case-by-case basis at the time of submission. Any person submitting information or data pursuant to Part 429 that the person believes to be confidential and exempt by law from public disclosure should submit via an attachment to CCMS: (1) A request for confidential treatment; (2) one complete copy, and (3) one copy from which the information believed to be confidential has been deleted or redacted. The request for confidential treatment must contain a comprehensive statement of the reasons for withholding the information from disclosure, including: (1) A description of the specific items for which confidential treatment is sought, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person that would result from public disclosure, (6) a date upon which such information might lose its confidential nature due to the passage of time, (7) why disclosure of the information would be contrary to the public interest; and (8) any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

DOE may defer acting on any requests for confidentiality until DOE receives a request for the disclosure of the information covered by the request. The information will be treated as confidential until DOE acts on the request and all subsequent appeal proceedings have been exhausted. In response to a request for the disclosure of information, DOE will review the submitter's views, but will make its own determination with regard to any claim that information submitted be exempt from public disclosure. If the

Department denies a request for confidentiality in whole or in part, seven days' notice of that determination will be given to the submitter pursuant to 10 CFR 1004.11(e) before the information is disclosed.

This approach provides submitters with an opportunity to express claims of confidentiality with particularity at the time the information is submitted, including a request for information to remain confidential for a set period of time, such as prior to a public product launch. Furthermore, it will allow the Department to determine whether a particular piece of information is exempt from public disclosure by law on a case-by-case, fact specific basis. In this way DOE can both consider confidentiality claims effectively and respond to disclosure requests promptly, while protecting against unlawful disclosure of information.

I. Enforcement Testing

1. Initiation of an Enforcement Action

The current regulations provide for enforcement testing only upon DOE's receipt of written information that a covered product or covered equipment may be violating a standard. 10 CFR 430.70(a); 10 CFR 431.373(a). In the September 2010 NOPR, DOE proposed to revise its procedures to make clear that, pursuant to section 6296 of EPCA, the Department retains the discretion to request data, test, or examine the standard compliance of any covered product or covered equipment at any time, and to initiate enforcement investigations and actions based on a belief that a covered product or covered equipment is not compliant with an applicable standard. 75 FR 56803; 56825.

Today's rule removes the requirement that DOE must receive a written complaint alleging a violation of the standard before it can perform enforcement testing to determine a model's compliance. The Department's need to exercise its discretion under the statute and enforce regulations proactively was recognized by a number of comments in the record. Consumer's Union and the Appliance Standards Awareness Project, for example, submitted comments in support of the Department's revision to its regulations to make clear that DOE, on its own, can initiate enforcement actions. (Consumer's Union, No. 74.1 at p. 3; Appliance Standards Awareness Project, Public Meeting Transcript, No. 103 at p. 21) Additionally, IAPMO R&T encouraged DOE to continue to seek companies that are not complying with the testing and reporting requirements so as to ensure a level, competitive playing field. (IAPMO R&T, No. 36.1 and 66.1 at p. 1)

Some commenters urged DOE to retain the existing limit on its discretion and require that it receive written information of a standards violation before testing to determine whether a product is compliant. Specifically, ABB requested that DOE retain the original requirement that a formal complaint must exist prior to the initiation of formal testing. (ABB, No. 53.1 at p. 11) AHRI also commented that the proposed change was unwarranted because DOE should have some reason for initiating an investigation of compliance or at least give preference to written information. (AHRI, No. 91.1 at p. 10)

The Department continues to believe that it is essential to align its regulations with its broad statutory authority under EPCA to initiate enforcement investigations and actions to determine if a covered product or covered equipment is compliant. This will ensure that the Department can enforce its regulations in a timely, effective manner as Congress intended. The enforcement program simply cannot be as effective if the Department can only initiate enforcement testing upon the receipt of an external complaint—DOE must be able to monitor compliance and test products at its own discretion.

Today's final rule reflects the Department's authority to monitor compliance by requesting data and testing products, at any time, and to initiate enforcement investigations and actions based on a belief that a covered product or covered equipment may not be compliant with an applicable standard. This authority comes directly from the statute, *see* 42 U.S.C. 6296, which obligates the Department to ensure that all covered products and equipment comply with applicable Federal conservation standards. In addition, the Department's ability to request records, test products, and examine design standard compliance, at any time, is crucial to the deterrent effect of the Department's enforcement efforts. The Department believes its authority to take these actions will serve to encourage compliance.

Other commenters requested clarification regarding the criteria under which DOE will initiate an enforcement action. (*See* AWE, No. 38.1 at pp. 2–3; American Panel Corporation, No. 59.1 at p. 3; Royal Vendors Inc., No. 64.1 at p. 2; Hill Phoenix, No. 70.1 at p. 1) For example, American Panel Corporation suggested there should be written criteria setting conditions under which DOE may initiate enforcement testing without information from a third party. (American Panel Corporation, No. 59.1 at p. 3) Further, Ingersoll Rand expressed concerns because the September 2010 NOPR did not define the process that will be used to initiate enforcement testing. (Ingersoll Rand, No. 6.1 at p. 3) Similarly, NAMA noted its objection to DOE's ability to initiate enforcement testing at any time without notification, urging DOE to define the causes that would trigger an enforcement investigation. (NAMA, No. 11.1 at p. 6) NEMA commented that DOE should revise its regulations to require that DOE may initiate an investigation of compliance upon verified belief that a basic model may not be compliant. (NEMA, No. 26.1 at p. 11)

In practice, the Department's enforcement actions and how it chooses to exercise its enforcement authority will be dictated by the facts on a case-by-case basis. However, the Department understands commenters' desire for a greater understanding of the factors that DOE will use to guide the exercise of its enforcement discretion. We also recognize the importance of providing notice to regulated entities and making the Department's practices as transparent as possible. To provide further clarity, notice, and accountability, the Department plans to issue a policy statement on enforcement, which will address the types of factors and circumstances it will consider in deciding whether to initiate an enforcement action. The Department will make this policy statement available on its Web site in the near future.

2. Process Provided to Manufacturers During Enforcement Testing

Under the current regulations, DOE initially reviews the underlying test data supporting the certification and provides the manufacturer with an opportunity to come in and meet with the Department upon receipt of information regarding a potential standards violation. 10 CFR 430.70(a); 10 CFR 431.373(a). In the September 2010 NOPR, DOE proposed to allow DOE, at any time, to request any information relevant to determining compliance, including the certification and test data. 75 FR 56825. In addition, DOE removed the provision requiring DOE to offer to meet with the manufacturer prior to initiating testing. *Id.*

Several commenters expressed concerns that removing these provisions would deprive manufacturers of the ability to respond in a timely and informed way to allegations of noncompliance. AHRI, for example,

commented that DOE should retain the requirement in its current regulations that DOE review underlying data provided by the manufacturer and offer the manufacturer the opportunity to meet with DOE to verify the compliance of the model(s) in question before initiating enforcement testing. (AHRI, No. 91.1 at p. 10) Similarly, AHAM argued that before a finding of noncompliance, DOE should communicate with the manufacturer or private labeler during the testing process and invite them to witness testing. (AHAM, No. 98.1 at p. 11) Additionally, AHAM stated that DOE should provide manufacturers with copies of test reports, regardless of whether the product is found to be compliant. *Id.* Traulsen also commented that DOE should provide the manufacturer with an opportunity to witness testing or, at a minimum, review the data and equipment prior to any final rulings. (Traulsen, No. 52.1 at p. 7)

The Department will continue to afford manufacturers due process and an opportunity to respond to allegations in the course of an enforcement investigation. The Department's forthcoming enforcement policy statement will provide additional guidance and detail on the enforcement process. However, in light of the comments, we address a few issues here as well. With respect to the manufacturer's certification test data, the Department agrees with interested parties that reviewing the data underlying the certifications prior to initiating enforcement testing is in an important step in the investigative process because it can reveal additional details that are not apparent in the certification data. Thus, the Department typically reviews the underlying certification data and test reports supporting the certification report prior to proceeding to enforcement testing. However, because there may be rare circumstances where expedited testing is necessary, DOE believes it is important to maintain flexibility by providing DOE with authority to request records and initiate testing at any time. DOE also agrees that manufacturers should have access to enforcement test data. DOE expects to provide the manufacturer with the test data reports after the enforcement testing has been completed. The Department will also return any test units provided by the manufacturer (or at the manufacturer's expense) once the case is officially closed.

3. Test Notice

DOE's current regulations require manufacturers to ship units for enforcement testing within five working days once they have been identified by DOE. 10 CFR 430.70(a)(v); 10 CFR 431.373(a)(v). In the September 2010 NOPR, DOE proposed to reduce the time period by which a manufacturer must ship test units of a basic model to the testing laboratory pursuant to a test notice from 5 to 2 days. 75 FR 56826.

In today's rule, the Department (1) retains the current regulation's five working day shipping rule for high volume, off-the-shelf products and (2) adopts a flexible window for low volume, custom built products. As discussed below, many of the commenters suggested that DOE separate built-to-order from pre-manufactured, off-the-shelf products, giving built-to-order products a longer time period to ship the basic model. The Department agrees and adopts this approach. To ensure that manufacturers have an adequate amount of time to ship test units for such low volume, built-to-order products, the Department is establishing separate shipping time periods by which a manufacturer must ship test units of a basic model for different groups of products.

For off-the-shelf products, which can be acquired at the retail level, DOE is retaining the current five-day window to ship a basic model to a test laboratory in the event a manufacturer receives a notice for enforcement testing from DOE. The record reflects that reducing the time frame from five to two days would impose a significant burden. In particular, JVC, Royal Vendors Inc., ALS, NEEA, Hill Phoenix, Ingersoll Rand, Delta Faucet, AHAM, AHRI, Manitowoc Ice, Craig Industries, Traulsen, GE Prolec, Kysor Panel Systems, and the Appliance Standards Awareness Project generally commented that two days is too short and would work an undue hardship on the manufacturer, distributor or dealer from whom the test samples are being acquired. (JVC, No. 56.1 at p. 1; Royal Vendors Inc., No. 64.1 at p. 2; ALS, No. 66.1 at p. 3, NEEA, No. 67.1 at p. 7; Hill Phoenix, No. 70.1 at p. 2, Ingersoll Rand, No. 6.1 at p. 4; Delta Faucet, No. 94.1at p. 2; AHAM, No. 98.1 at p. 9, AHRI, No. 92.1 at p. 10; Manitowoc Ice, Public Meeting Transcript, No. 103 at pp. 174–175; Craig Industries, Public Meeting Transcript, No. 103 at pp. 179–180; Traulsen, No. 52.1 at p. 6; GE Prolec, No. 95.1 at p. 6; Kysor Panel Systems, Public Meeting Transcript, No. 103 at p. 182; ASAP, Public Meeting Transcript, No. 103 at pp. 183–184)

For products like low-volume or built-to-order models that are unavailable upon receipt of the test notice at the manufacturer's facility, warehouse, distribution chain, or retailer, DOE will work with the manufacturer to obtain units as quickly as possible for a pending enforcement case. The comments in the record support a longer timeframe and a more flexible approach for these types of products. In particular, BWC, American Panel, AO Smith, NEMA, MEUS, NAMA, and ABB generally noted that the existing 5 days is too short, especially for custom, built-to-order products, which require a longer lead time to manufacture. (BWC, No. 45.1 at p. 3; American Panel, No. 59.1 at p. 3; AO Smith, No. 81.1 at p. 4; NEMA, No. 85.1 at p. 5, MEUS, Public Meeting Transcript, No. 103 at p. 183; NAMA, No. 25.2 at p. 5; ABB, No. 53.1 at p. 10) Some of these commenters also suggested a one-size-fits-all approach is impractical for a number of products. For example, American Panel asserted that 3 to 15 days are required to manufacture custom Walk-In Coolers or Freezers (WICFs). (American Panel, No. 59.1 at p. 3) Further, BWC asserted that 30 days is a more appropriate time period for shipping water heater test units, especially niche products, which are almost entirely built-to-order. (BWC, No. 45.1 at p. 3) Today's rule adopts a flexible approach in response to commenters' concern that it may not be feasible for low volume or built-to-order products to comply with a few days lead time for shipping test units for enforcement testing purposes.

4. Sampling for Enforcement Testing

The existing sampling procedures to be used for enforcement testing are set forth in Appendix B to Subpart F of Part 430 (consumer products), Appendix B to Subpart K of Part 431 (distribution transformers), Appendix C to Subpart S of Part 431 (metal halide lamp ballast), and Appendix D to Subpart T of Part 431 (certain commercial equipment).The sampling plan for enforcement testing of consumer products requires testing an initial sample of four products. Then, depending on the variation in the testing results of the initial sample, a second sample size of up to 16 additional units may need to be tested to make a determination of compliance or non-compliance per the current regulations. (Appendix B to Subpart F of Part 430)

For commercial products, DOE's existing regulations are similar to those of consumer products except there are provisions for testing a sample of less

than four products for commercial heating, ventilation, air-conditioning, and water heating equipment when the full sample cannot be obtained. In addition, the tolerances for certain commercial products are different due to the equipment-specific attributes such as manufacturing practices and testing procedures.

In the September 2010 NOPR, DOE proposed to increase the maximum sample size for enforcement testing of all products to 21 units. 75 FR 56826. DOE proposed this increase in the maximum number of units to account for the test sample needed for certain types of consumer lighting products. 75 FR 56804.

In addition, DOE recognized that a sample size of 20 total units under the existing regulations may not always be available for basic models that are low-volume or built-to-order. To accommodate these circumstances and reduce burden on manufacturers, DOE proposed to modify the existing sampling procedures to account for low-volume and built-to-order basic models. 75 FR 56803–804; 56826. Further, DOE proposed to retain the discretion to determine whether the basic model qualifies as low-volume or built-to-order. DOE proposed to make such determination by evaluating the number of units of a given basic model available at the manufacturer's site and all distributors. *Id.*

Today's rule makes two general changes to the current enforcement sampling regulations. First, it increases the maximum number of units that may be tested to 21. Second, it adopts new, flexible sampling provisions for low volume or custom-built products. Together, these provisions permit the Department to identify units for enforcement testing effectively, depending on the circumstances of a particular case.

First, for high-volume, consumer products and commercial equipment, DOE retains its sampling plan proposal, under which DOE tests an initial sample size of four units per basic model and, depending on the variability of the test results, may test up to 17 additional units, as required, for enforcement testing. DOE believes this is the best approach to provide robust test results and ensure that products are not incorrectly found out of compliance. DOE notes that with the exception of increasing the maximum sample size for off-the-shelf products from 20 to 21—which reflects the test sample needed for certain types of consumer lighting products—the sampling provisions for enforcement testing are nearly identical to the current provisions found in DOE's regulations and those currently being used for enforcement testing.

Second, DOE agrees with many of the comments on the importance of flexibility where units are not available for testing, especially in the case of low-volume or built-to-order basic models. American Panel Corporation stated its belief that DOE should allow for additional sampling based on analysis of the first sample(s) since the initial testing of products could be impacted by testing queues of as much as six months. (American Panel Corporation, No. 59.1 at p. 3) Ingersoll Rand recommended that DOE consider the nature and the cost of the product under test. (Ingersoll Rand, Public Meeting Transcript, No. 103 at p. 319 and No. 6.1 at p. 3) General Electric Lighting encouraged DOE to do computer simulation of enforcement testing to ensure that DOE has a high degree of confidence that DOE will not produce a false signal of non-compliance. (General Electric Lighting, Public Meeting Transcript, No. 103 at p. 229) IAPMO R&T stated its support for DOE's current proposal for enforcement testing. (IAPMO R&T, No. 36.1 at p. 2) Royal Vendors misunderstood DOE's proposal and commented that an initial sample size of four units and an additional sample size of up to 21 units is troublesome because of the unit cost, which could be burdensome and the availability of those units could be difficult to obtain. (Royal Vendors, No. 64.1 at p. 2) NAMA opposed the enforcement sampling size procedures as they related to beverage vending machines because the manufacturers do not have the economic capacity to warehouse up to 20 beverage vending machines of each basic model. NAMA urged DOE to use its discretion when fewer than two beverage vending machines of a given model are available for testing within 30 days of the test notice. (NAMA, No. 25.1 at pp. 4–5) Hoshizaki America, Inc. stated its belief that test samples should be minimized for commercial equipment, generally, because these units can be costly to make and house if limited machines are sold each year. (Hoshizaki America, Inc. No. 75.1 at p. 1)

Recognizing these concerns, DOE has decided to adopt several enforcement sampling provisions that take account of low-volume or built-to-order consumer products and commercial equipment. First, DOE specifies provisions for certain covered products and equipment where there is a lower volume market and manufacturing tends to be more customized. These include automatic commercial ice makers, commercial refrigeration equipment, refrigerated bottled or canned vending machines, commercial HVAC and WH equipment, and distribution transformers. The initial sample size of these units matches that of high-volume consumer and commercial equipment, which is four units.

Second, DOE is including a provision that provides for testing of fewer than four units if they are unavailable at the time the test notice is received. While these provisions were proposed in the September 2010 NOPR, DOE has attempted to clarify them to aid manufacturers in determining the exact sample size required for enforcement testing depending on product or equipment type.

Finally, DOE has also included a general provision applicable to all covered products and covered equipment, which allows DOE to use its discretion in determining the sample size when covered products and covered equipment are generally unavailable. DOE will use many of the considerations that interested parties noted above in their comments, including the availability of units and the availability of third-party testing facilities to run the DOE test procedure.

5. Testing Done for Other Agencies

DOE proposed to allow units tested using the applicable DOE test procedure by DOE or another Federal agency, pursuant to other provisions or programs, to count toward units in the test sample for enforcement testing, so long as the testing is done in accordance with the DOE test procedures and certification testing provisions. 75 FR 56804. The record does not reflect any specific comments on this issue and DOE continues to believe the Department should not have to duplicate efforts taken by itself or by other agencies to re-test units that have already been tested by the Federal government using DOE's test procedure. Thus, DOE is adopting this provision, as proposed, in the final rule.

6. Test Unit Selection

Currently, DOE must obtain units for testing directly from the manufacturer's facility or another location specified by the manufacturer. In the September 2010 NOPR, DOE proposed to revise its test unit selection provisions for enforcement testing to allow DOE to select the units of a basic model to be tested from the manufacturer, a distributor, or directly from a retailer. 75 FR 56826. For low-volume or built-to-order products, DOE proposed that it would determine the most reliable method of selecting units that are

representative of those sold to consumers. *Id.*

In today's rule DOE is adopting in its regulations that DOE may select units of a basic model to be tested for enforcement purposes from a distributor, a retailer, or the manufacturer. Reliable enforcement testing requires the selection and testing of an unbiased sample that is representative of the units distributed in commerce. Based on DOE's experience, it is necessary to obtain units from diverse sources to allow for an unbiased, representative, and sufficient sample to produce the most reliable testing. A number of commenters supported DOE's proposal to obtain test units from retailers and distributors, as well as directly from the manufacturer. (AWE, No. 38.1 at p. 3; NEEA, No. 67.1 at p. 7; NRDC, No. 80.1 at p. 6)

Some commenters objected to this change, arguing that test units should come directly from the manufacturer. BWC stated this was necessary since not every manufacturer distributes their product through the retail channel. (NAMA, No. 25.1 at pp. 5–6; BWC, No. 10049 at p. 3; AHRI, No. 92.1 at p. 10) Commenters also noted that DOE's approach of obtaining test units from retailers would be too burdensome for products with limited or no stock. For example, Craig Industries stated that a WICF test unit is not stocked and would therefore have to be built by the manufacturer and then shipped to DOE at a cost of approximately $6,000 per unit under DOE's test unit selection process. (Craig Industries, Public Meeting Transcript, No. 103 at p. 192) As described above, however, DOE did not propose and is not adopting a process to select exclusively from retail sources. Today's rule broadens the potential sources of units for testing. DOE is not changing from a manufacturer-supplied process to an exclusively retail-supplied process.

NAMA and AHRI further argued against selecting units from distributors or retailers because the manufacturer cannot be held responsible for equipment once it is out of their control. (NAMA, No. 25.1 at pp. 5–6; AHRI, No. 92.1 at p. 10) DOE agrees that manufacturers should not be held responsible for most post-production modifications; however, unaltered equipment should function as intended whether it is obtained directly from the manufacturer or through the manufacturer's normal distribution channels. NAMA also questioned whether DOE is considering testing used or rebuilt equipment that has been modified by the purchasers, which would not provide a valid test of compliance. (NAMA, No. 25.1 at pp. 5–6) DOE has previously stated that its authority does not extend to rebuilt and refurbished equipment, and DOE does not plan to test equipment not covered by regulation. *See, e.g.,* 74 FR 44920. Similarly, DOE is not adopting any change to the existing regulatory requirement that no quality control, testing or assembly be performed on units selected for testing. Therefore, irrespective of the source (retail, distributor or manufacturer), DOE intends to obtain and test units to which no alterations have been made. More generally, DOE believes that selecting units from the retailer or distributor may often provide DOE with the best representation of a typical unit that is distributed in commerce.

DOE recognizes that for low-volume and built-to-order basic models that are not available from retailers or distributors, the only method of obtaining these units, in many cases, is from the manufacturer. Manufacturers of low-volume and built-to-order basic models also explained that they will most likely not have inventory available for enforcement testing. (*See e.g.,* GE Prolec No. 95.1 at pp. 5–6) In such cases, DOE does not intend to require manufacturers to produce units simply for the purpose of enforcement testing. Doing so exclusively could be burdensome and wasteful and could risk introducing bias in the enforcement test sample. Rather, DOE will work with the manufacturer to identify units for enforcement testing, which may include similar alternative models. Moreover, DOE is also adopting a provision in today's final rule, which allows DOE to use its discretion to perform enforcement testing at a manufacturer's laboratory when there are extenuating circumstances, which make testing at a third-party laboratory impracticable or inadvisable. In these rare instances, the manufacturer's lab must also be accredited to the International Organization for Standardization (ISO)/ International Electrotechnical Commission (IEC) 17025, "General requirements for the competence of testing and calibration laboratories", Second edition, May 15, 2005, (ISO/IEC 17025:2005(E)) and DOE will witness the testing. DOE believes this will also facilitate the enforcement process of low-volume and built-to-order products.

Other commenters expressed concern about the mechanism by which manufacturers would be notified of unit selection when units are obtained from retailers or distributors. AO Smith noted that if DOE adopts the approach of selecting test units from retailers, then a clear definition of cost would need to be established as well as a method of notifying a manufacturer that a unit was selected and obtained from a certain supplier. (AO Smith, No. 81.1 at p. 3) AHRI requested that DOE clarify that a manufacturer's reimbursement to the retailer is limited to providing a replacement product without any additional monetary compensation. (AHRI, No. 92.1 at p. 10; AHRI, Public Meeting Transcript, No. 103 at pp. 191–192) AO Smith also commented that although obtaining samples from a distributor or retailer may be a reasonable idea to prevent pre-selection of units by the manufacturer, it will be difficult (if not impossible) to administer. (AO Smith, No. 81.1 at p. 3)

DOE believes that obtaining units from a distributor or retailer will be relatively straightforward, as manufacturers have specified distributors as sources under the current regulations and have arranged some form of compensation to facilitate the transfer of the units to DOE's specified test lab directly from the distributors. Furthermore, DOE is adopting a process that includes the issuance of a test notice, which will specify the source of units for testing. Therefore, the manufacturer will be aware of the selection of units and can make arrangements to compensate the retailer for the units selected for testing. As stated earlier, DOE will communicate with manufacturers during the enforcement process and keep them informed about the investigation. Today's rule does not specify the form of reimbursement the manufacturer provides to the retailer. Such reimbursement may take the form of a replacement unit, monetary compensation, a voucher, or any other mechanism upon which the manufacturer and retailer agree.

Some of the commenters supporting the rule urged DOE to go farther, recommending that DOE adopt a preference for retail selection and obtain samples for testing from the manufacturer only if no retail product is available. NEEA and NRDC, for example, requested that DOE develop a protocol for enforcement testing that would establish off-the-shelf testing as the preferred method for acquiring products. (NEEA, No. 67.1 at pp. 7–8; NRDC, No. 80.1 at p. 6) NEEA further suggested that DOE's prioritization process for sourcing products for testing should be aligned to the Energy Star program's prioritization process. (NEEA, No. 67.1 at pp. 7–8)

The Department declines to adopt a systematic preference for sourcing products for enforcement testing from either retail or manufacturer sources. As

the comments reflect, retail sources may be preferred in some instances, while manufacturer sources will be more effective in others. Thus, the Department retains the discretion to select units in the manner most appropriate in a particular case to achieve our goals of unbiased, representative, and sufficient samples. Testing an unbiased sample and obtaining that sample quickly when DOE has identified a potentially noncompliant product is necessary to ensure the American public is receiving the energy efficiency promised by the Federal efficiency standards. The Department will consider many factors when determining where to obtain units, including unit availability and shipping times. DOE realizes that basic models may not always be available from the retailer or distributer, such as if the unit is a seasonal product like a room air conditioner. Consequently, DOE is retaining its discretion to obtain basic models from the manufacturer, a retailer, a distributor, or some combination thereof.

7. Testing at Manufacturer's Option

After the Department has tested a model and determined through statistical analysis that it does not meet the applicable standard, the existing regulations allow a manufacturer to do additional testing at DOE's selected lab at the manufacturer's expense. In the September 2010 NOPR, the Department proposed to remove these sections because manufacturers can perform additional testing on their own at any time.

The Department is removing the regulatory provision governing manufacturer testing because it is both unnecessary—given that manufacturers are free to perform additional testing on their own at any time—and otherwise delays the finality of a compliance determination. In written comments, AHRI, ABB, and NEMA opposed removal of the provisions allowing additional testing at the manufacturer's option. (AHRI, No. 92.1 at p. 11; ABB, No. 53.1 at p. 9, NEMA, No. 85.1 at p. 11) In particular, AHRI commented that this provision provides a safeguard against a "false negative" conclusion and provides manufacturers with fair, due-process in enforcement testing. (AHRI, No. 92.1 at p. 5) AHAM further commented that while it recognizes the Department is interested in minimizing delay in the enforcement process, this should not be at the expense of the Department being fair and obtaining accurate results. (AHAM, Public Meeting Transcript, No. 103 at p. 244)

The Department disagrees that removing the manufacturer optional testing provision will result in unfairness or inaccurate test results. Manufacturers can perform additional testing on their own and provide test results to DOE at any time. There is no need for a regulatory provision to give them this option. Moreover, DOE's enforcement testing is based on a statistically valid sample size. Once the Department has completed its enforcement testing, allowing for any additional testing serves no purpose other than to increase the testing sample size. As NEEA's comment explained, if the enforcement testing is done in a statistically rigorous way (according to procedure, within specified tolerances), then the only impact of further testing, regardless of who does it, is delay in the enforcement process. (NEEA, No. 67.1 at p. 8) Furthermore, under the existing (and proposed) regulation, manufacturers are prohibited from distributing the model in commerce during any additional manufacturer-elected testing, so delay in moving the adjudication process forward works to the disadvantage of the manufacturer.

Raising concerns about the possibility of defects in the tested units, MEUS, Johnson Controls, and Manitowoc Food Service generally commented that it is necessary for manufacturers to have the ability to test the same units that DOE has tested for there to be a determination that a component was defective. (MEUS, Public Meeting Transcript, No. 103 at pp. 233–234; Johnson Controls, Public Meeting Transcript, No. 103 at pp. 233–234; and Manitowoc Food Service, Public Meeting Transcript, No. 103 at pp. 242–243) Similarly, Owens Corning stated at the public meeting that it is imperative for manufacturers to retest a product that has been determined to be out of spec by an outside laboratory to determine whether it was the product or the outside laboratory's test that was at fault. (Owens Corning, Public Meeting Transcript, No. 103 at pp. 226–227) Such comments, however, reflect a misunderstanding of DOE's current regulations, which do not allow the manufacturer (1) to test the same units tested by DOE, (2) to observe the additional testing permitted by the regulation, or (3) to select the test lab for manufacturer-elected testing. Furthermore, today's final rule retains the current regulatory provision addressing defective units, allowing DOE to test a replacement unit if a selected unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according to the manufacturer's design and operating instructions.

Other commenters expressed concerns about variability or uncertainty surrounding how an outside laboratory would conduct enforcement testing, and whether the laboratory would conduct the test in a manner similar to that of the manufacturer. NEMA, for example, asserted that manufacturers of distribution transformers should have some ability to challenge the results of an independent test lab that does not have proven, established experience with the particular product tested. (NEMA, No. 85.1 at p. 11) Similarly, GE Appliances and Lighting asserted that because variability questions exist among laboratories, where labs can test the same or similar products and get very different results, it is difficult for manufacturers to feel comfortable and validate those results. (GE Appliances and Lighting, Public Meeting Transcript, No. 103 at pp. 241–242)

As discussed below, DOE's enforcement testing will be done by appropriately qualified, ISO/IEC 17025:2005 accredited laboratories. However, in recognition of the concerns of the rare instances when laboratories may be unavailable to test certain products or equipment, DOE is adopting a provision in today's final rule that allows DOE to use its discretion to perform DOE-witnessed enforcement testing at a manufacturer's laboratory when there are extenuating circumstances that make testing at an independent laboratory inadequate or unrealistic.

8. Cost Allocation for Testing

In the September 2010 NOPR, DOE tentatively concluded that the cost of enforcement testing should remain with the Department, as existing regulations require. The Department received comments on this issue from the ALA, AWE and Hoshizaki America, Inc. Specifically, ALA commented that it supports DOE's tentative decision that the cost of enforcement testing should remain with DOE. (ALA, No. 97.1 at p. 1) In addition, AWE noted that DOE should consider alternate vehicles to pay for enforcement testing, including certification fees, VICP from manufacturers, and revolving funds paid from successful enforcement fines. (AWE, No. 38.1 at p. 3) Lastly, Hoshizaki America, Inc. suggested that the cost of enforcement testing be on a case-by-case basis, similar to AHRI's current process, which requires that the loser in the challenge process pay for enforcement testing. (Hoshizaki, No. 75.1 at p. 2) Hoshizaki America stated

that the manufacturer should only have to pay for testing with enforcement if they are found to be in non-compliance. (Hoshizaki, No. 75.1 at p. 2)

DOE appreciates the suggestions by the commenters on the variety of potential methods to pay for enforcement testing. Unlike voluntary programs, which could incorporate a potential fee for registration, DOE's regulatory program requires manufacturers to certify with the Department and we currently have no authority to collect filing fees that could be used for administering the enforcement program. DOE agrees with ALA that the cost of enforcement testing should reside with the Department, as this allows the Department with the greatest flexibility in executing the enforcement testing at the third-party laboratory of its choice. Consequently, DOE concludes that the cost of enforcement testing should remain with the Department and is not adopting a change in today's final rule.

9. Third-Party Laboratory Requirements for Enforcement Testing

DOE did not propose specific third-party laboratory requirements for enforcement testing in the September 2010 NOPR. However, DOE sought comment, generally, about the attributes of a laboratory accreditation program as it relates to enforcement testing.

In response, DOE generally received comments supporting some type of broad accreditation for laboratories DOE uses to enforcement test covered products and covered equipment. For example, Earthjustice commented that accreditation should be required for all labs testing covered products and equipment. (Earthjustice, No. 83.1 at p. 1) UL stated its support for laboratory accreditation through the ISO/IEC 17025:2005 process. UL further commented that adoption of an ISO/IEC 17025:2005 requirement will improve initial product quality. (UL, No. 60.1 at p. 2) Similarly, IAPMO R&T commented that the laboratory used for determining compliance in enforcement actions should meet the ISO/IEC 17025:2005 requirements. (IAPMO R&T, No. 36.1 at p. 2) Additionally, the Natural Resources Defense Council, the Appliance Standards Awareness Project, the National Consumer Law Center, and the Northeast Energy Efficiency Partnership submitted a joint comment supporting laboratory accreditation for enforcement testing. (NRDC, ASAP, NCLC, and NEEP, No. 39.1 at p. 4)

As a result of the support to establish some type of laboratory accreditation program for enforcement testing, DOE has taken the initial steps towards this goal by requiring that any laboratory used for enforcement testing by DOE be lab accredited to ISO/IEC 17025:2005. DOE believes this requirement, while limiting the laboratories DOE could use for potential enforcement testing, will provide interested parties with additional reassurance in the robustness and accuracy of the test results. DOE will continue to consider additional accreditation requirements, including test procedure-specific requirements, in the next certification, compliance, and enforcement rulemaking.

10. Enforcement for Imports and Exports

In the September 2010 NOPR, DOE proposed to modify the label on exported products that do not comply with the applicable energy conservation standard to read "NOT FOR SALE IN THE UNITED STATES" to make it clear that those products are not for distribution in commerce in the United States. Additionally, DOE sought comments on how to modify its certification, compliance, and enforcement provisions to more effectively enforce at the border.

In today's final rule, the Department is modifying its proposed label requirement for exported products to read "NOT FOR SALE FOR USE IN THE UNITED STATES." The Department believes this new language makes clear that the labeled item cannot be sold or distributed in the United States for ultimate use in the United States—which is what the statute requires—while incorporating commenters' suggestions that the label explicitly state "NOT FOR USE IN THE UNITED STATES." (*See* AWE, No. 38.1 at p. 3; NEMA, No. 85.1 at p. 4; Baldor Electric, Public Meeting Transcript, No. 103 at p. 317; Rheem, No. 79.1 at p. 6; GE Prolec, No. 95.1 at p. 9) As NEMA explained in its comment, this change to the language will account for the fact that "the commercial process often involves sale to a U.S. based company for subsequent export." (NEMA, No. 85.1 at p. 4). The Department declines to adopt the suggestions from ALS that the label should state "EXPORT," and from Schneider Electric that we should use the term "Installation" instead of "Sale." (ALS, No. 66.1 at p. 5; Schneider Electric, No. 63.1 at p. 3) To enforce compliance with the energy efficiency regulations at the border, the Department believes it is essential to include language on the label clearly indicating the product must not be sold for use in the U.S.

With regard to DOE's question in the September 2010 NOPR on how to modify its regulations to more effectively enforce at the border, the Department received several comments recommending that DOE develop documentation and labeling requirements for determining compliance. For example, GE Prolec recommended that DOE provide additional documentation guidelines for import reviews by U.S. Customs and Border Protection (CBP), since it would be extremely difficult for CBP to determine if a distribution transformer was compliant from only a visual perspective. (GE Prolec, No. 95.1 at p. 9) Additionally, GE Prolec suggested DOE adopt some sort of a labeling requirement, such as a symbol, for commercial products that would explicitly state that it was compliant with the energy efficiency regulations. (GE Prolec, Public Meeting Transcript, No. 103 at pp. 312–314) Similarly, the NEMA Transformer Section recommended that DOE adopt a program, akin to the CC number system used for motor manufacturers, that would indicate to CBP that the product comes from a source that has complied with the certification and compliance requirements of the DOE. (NEMA Transformer Section, No. 84.1 at p. 16) For Medium-Voltage Dry-Type and Liquid-Fill Distribution Transformers, the NEMA Transformers Section proposed requiring a "Circle E" to be placed on all products tested and certified to indicate compliance with the energy conservation standards. (NEMA Transformer Section, No. 84.1 at p. 16)

The Department agrees that it may be beneficial to adopt some type of documentation to verify compliance and will consider these comments in its ongoing discussions with CBP. The Department declines to adopt commenters' suggestions regarding labeling for distribution transformers at this time. DOE questions the value of CC numbers assigned to motor manufacturers and does not wish to extend this practice to distribution transformers. We do not adopt any type of labeling requirement, including placement of a "Circle E" on a product, at this time. While DOE continues to work with CBP for effective enforcement of the energy conservation standards at the border, any labeling requirement DOE would adopt would need to be established in coordination with CBP, as CBP is be the agency that has the authority to deny entrance of any products that are not in compliance with the energy conservation standards.

Other commenters generally suggested that DOE develop some type of enforcement program with CBP to conduct inspections at the port. (*See* NEMA Motor & Generator Section, No.

84.1 at p. 22) For example, the NEMA Lamp Section suggested that DOE work with CBP to determine when regulated products are being imported, particularly to identify companies without a significant brand presence in the U.S. and who may not be familiar with U.S. energy regulations. (NEMA, No. 84.1 at p. 31) The NEMA Lamp Section also recommended that CBP set up a system to assure that products imported comply with DOE regulations. Specifically, NEMA suggested an audit system to follow up with the importer of record to review test reports from a NVLAP accredited lab. (NEMA, No. 84.1 at p. 31) Further, the Office of Energy Efficiency, Natural Sources Canada (NRCAN) recommended that, similar to the requirements of the Canadian Border Services Agency, DOE may want to work with CBP to require that a manufacturer provide to CBP certain data elements as it imports a product, including the purpose of import for the product. (NRCAN, Public Meeting Transcript, No. 103 at pp. 315–317)

As previously stated, the Department is currently working with CBP on ways to ensure effective enforcement of the Federal energy efficiency regulations at the border and will take commenters' suggestions into consideration in developing any new practices with CBP.

Lastly, regarding specific changes to the regulatory text proposed in the September 2010 NOPR, NEMA recommended that DOE revise its proposed language in the imported and exported products rule in the proposed sections 429.25–26. (NEMA, No. 84.1 at pp. 4–5) NEMA asserted that DOE should make clear that the reference to "this part" in proposed sections 429.25 and 429.26 refers not only to Part 429, but also Parts 430 and 431. (NEMA, No. 84.1 at p. 4) NEMA additionally commented that DOE make explicit in proposed section 429.25(b) that there is an exception for a product imported for export. (NEMA, No. 84.1 at p. 5) The Department agrees with NEMA regarding the reference to "this part" in proposed sections 429.25–26 and revises these sections in today's final rule sections 429.5 and 429.6 to include not only Part 429, but also Parts 430 and 431. With respect to NEMA's comment on proposed section 429.25(b), however, DOE believes that no change is needed. The existing text already reflects that there is an exception for a product imported for export, and, of course, section 429.6 specifically addresses exported products.

J. Adjudication

1. Prohibited Acts

In the September 2010 NOPR, DOE proposed to explicitly establish in its rules that a manufacturer's failure to properly certify a covered product or covered equipment and retain records in accordance with DOE regulations may be subject to enforcement action, including the assessment of civil penalties, separate from any determination of whether a covered product or covered equipment does or does not comply with the applicable conservation standard. In addition, the Department proposed to revise its regulations to make clear that the following violations would also constitute a prohibited act subject to enforcement action: (1) A failure to test any covered product or covered equipment subject to any of the conservation standards, including deliberate use of controls or features in such product or equipment to circumvent the requirements of a test procedure and produce test results that are unrepresentative of a product's energy or water consumption if measured pursuant to DOE's required test procedure; (2) a manufacturer or private labeler's distribution in commerce of a basic model after a notice of noncompliance determination has been issued; and (3) the occurrence of a knowing misrepresentation.

DOE received comments from various member sections of NEMA on its proposed enforcement steps. In particular, the NEMA Motor and Generator Section requested clarification that not testing a basic model is not a violation when the efficiency of the basic model has been certified under an AEDM or certification program. (NEMA, No. 85.1 at p. 26) On this point, the Department clarifies that a basic model must be tested in accordance with a DOE test procedure and regulations, which includes sampling plans and alternative methods of testing, to be properly certified. Thus, if a manufacturer is using an AEDM to certify a basic model, then, so long as the manufacturer has substantiated and applied the AEDM properly in accordance with DOE regulations, there is no violation.

The NEMA Motor and Generator Section also commented that DOE should permit a grace period between the time of issuance of a notice of noncompliance determination and the time at which distribution must be fully stopped, since distribution of a noncompliant electric motor may need to be stopped at several locations. *Id.* DOE declines to adopt such a grace period, because EPCA, on its face, clearly prohibits a manufacturer from distributing a noncompliant product. As a matter of law, once a manufacturer receives a notice of noncompliance, the manufacturer must immediately discontinue its sales of the noncompliant product.

Additionally, the NEMA Lamp Section and NEMA Lamp Ballast Section stated that while they accept the need for enforcement steps in cases of knowing misrepresentation, a high level of confidence should be required to establish this and the enforcement standard would have to acknowledge industry and regulatory tolerances. (NEMA, No. 85.1 at pp. 38, 52) These Sections also noted that the sampling provisions can result in an under-representation of the true performance characteristic and expressed concern that this would be considered a knowing misrepresentation. *Id.* The NEMA Lamp Section and NEMA Lamp Ballast Section further questioned DOE's authority to pursue this type of relief against false and misleading statements under EPCA, recommending instead that the FTC has some authority for this type of enforcement under the FTC Act. *Id.*

Today's rule clarifies that a knowing misrepresentation of the efficiency of a product in a required certification report to the Department is a violation under EPCA. Pursuant to EPCA, DOE has the authority to require that manufacturer submissions are both accurate and provided in accordance with its regulations. (*See* 42 U.S.C. 6302(a)(3).) A failure to do so is a prohibited act under EPCA and DOE rules and is subject to enforcement action. A contrary reading would substantially undermine the purpose of the certification and compliance requirements in the first place—to ensure that all covered products distributed in commerce comply with the applicable energy conservation standards and have been tested as prescribed by the rules. The Department also wishes to clarify that a conservative rating is not a misrepresentation. As long as the tested performance of the product is at least as good as its certified rating, a knowing misrepresentation will not have occurred. Rather, a misrepresentation occurs when a manufacturer certifies a product it knows to be noncompliant or when a manufacturer certifies a value it knows cannot be supported by test data. Of course, separate from an EPCA violation, such conduct is also prohibited by 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

2. Penalties

In the September 2010 NOPR, the Department proposed to revise its regulations to state clearly that for certification requirement violations, per statutory authority and DOE guidance, the Department would calculate penalties based on each day a manufacturer distributes each basic model in commerce in the United States without having submitted a certification report. Additionally, DOE proposed to explicitly state in its regulations that, consistent with its guidance, it would consider numerous factors in assessing civil penalties, including: The nature and scope of the violation; the provision violated; the violator's history of compliance or noncompliance; whether the violator is a small business; the violator's ability to pay; the violator's timely self-reporting of the violation; the violator's self-initiated corrected action, if any; and such other matters as justice may require. In today's final rule, the Department clarifies its penalty procedure. Further, the Department determines not to add to its regulation the specific factors DOE takes into consideration when assessing civil penalties, as proposed in the September 2010 NOPR.

The Department has determined that it will not adopt its proposal to list explicitly in its regulations the factors that DOE takes into consideration in assessing civil penalties. The Department's previously issued Guidance on the Imposition of Civil Penalties for Violations of EPCA Standards and Certification Obligations (Penalty Guidance), available at *http://www.gc.energy.gov/documents/Penalty_Guidance_5_7_2010_final_(1).pdf,* sets forth the Department's approach to the imposition of penalties for violations of DOE's standards and certification requirements. This guidance provides ample notice to regulated entities and makes more transparent the process by which DOE calculates penalties. Since this guidance already lists the factors that DOE will consider in calculating a penalty, repeating these factors in the Department's regulations would be duplicative.

Although we are not adopting this provision, the Department has considered comments on DOE's proposal in light of the existing Penalty Guidance. For example, Earthjustice suggested that, to make the assessment of penalties fairer, DOE should use the manufacturer's markup across the industry for a product to calculate how much a manufacturer has benefitted from selling a noncompliant product and then take that into consideration in developing a penalty amount. (Earthjustice, Public Meeting Transcript, No. 103 at pp. 268–269) The Department agrees with Earthjustice and will amend its Penalty Guidance to include a manufacturer's markup data as one of the factors the Department may consider in developing a penalty amount.

A few parties objected to some of the factors listed in DOE's Penalty Guidance. Specifically, American Panel stated that certain factors DOE considers in assessing civil penalties, namely the size of violator's business and violator's ability to pay, have merit but could lead to unequal enforcement. (American Panel, No. 59.1 at p. 3) The NEMA Motor & Generator Section similarly commented that penalties should be the same for any violator, regardless of size or ability to pay (NEMA, No. 85.1 at p. 26) The Department is mindful of such concerns and wishes to reassure parties that it will balance concerns of fairness and equity in the assessment of penalties to achieve deterrence and encourage timely resolution of any instances of non-compliance. While DOE will look at a company's size and their ability to pay, this will just be one factor among others from which the Department determines the appropriate penalty in any given case.

Interested parties also suggested including additional penalties for frivolous claims. Specifically, the NEMA Motor & Generator Section recommended that a penalty be assessed on anyone who submits a frivolous claim about a violation which is found to be untrue. *Id.* American Panel also suggested there should be some sort of penalty for frivolous turn-in, so that regulated entities are deterred from turning in their competitors without merit. (American Panel, Public Meeting Transcript, No. 103 at pp. 277–278) The Department recognizes commenters' concerns and shares the desire to prevent the filing of frivolous complaints. However, DOE does not have the authority under EPCA to assess penalties for frivolous claims. Under the statute, the Department may only assess penalties for specified prohibited acts, and frivolous claims do not fit into any of these prohibitions. The Department will, however, exercise its discretion in initiating enforcement actions and will consider the source of the complaint and the Department's prior experience with involved parties in making such decisions.

Lastly, with regard to distribution transformers, Schneider Electric commented that the language in section 429.55 relating to the assessment of civil penalties should be modified from "each day of noncompliance" to "each day energized" since the distribution transformer can sit un-energized for months. (Schneider Electric, No. 63.1 at pp. 4–5) The Department understands that products may be used or not used in a variety of ways once distributed in commerce and that a distribution transformer may be distributed in commerce but not energized for some periods of time. But EPCA prohibits the distribution in commerce of noncompliant products, and this cannot turn on whether and how the product is used or energized once sold. Therefore, DOE declines to adopt Schneider Electric's proposal.

3. Imposition of Additional Certification Testing Requirements as Remedy for Non-Compliance

As an additional tool to ensure compliance with the DOE conservation standards and regulations, the Department proposed in the September 2010 NOPR to revise its regulations to provide that the DOE may require independent, third-party testing for certification of covered products and covered equipment where DOE has determined a manufacturer or private labeler is in noncompliance with the certification requirements or applicable conservation standards. DOE received no comments in opposition to this proposal and is including this requirement that allows for third-party certification testing for noncompliance in today's final rule.

4. Compromise and Settlement

In the September 2010 NOPR, the Department proposed to outline the steps to be taken by both parties (DOE and respondent) once a compromise or settlement offer has been made. No interested parties opposed this proposal, and the Department is including language outlining the process for compromising or settling a penalty amount assessed under its regulations in today's final rule.

K. Waivers

DOE also addressed the possibility of establishing a mandatory waiver requirement in the September 2010 NOPR. This would obligate manufacturers to obtain a waiver where the test procedure does not evaluate the energy or water consumption characteristics in a representative manner or where the test procedure yields materially inaccurate comparative data.

The Department received comments in support of a mandatory waiver requirement from NRDC, the Appliance Standards Awareness Project,

Consumers Union, NEEA and AWE (NRDC, No. 39.1 at p. 6; Appliance Standards Awareness Project, Public Meeting Transcript, No. 103 at pp. 34–35; Consumers Union, No. 74.1 at p. 5; NEEA, No. 67.1 at p. 3; AWE, No. 38.1 at p. 2) For example, NRDC recommended that DOE require manufacturers to report to DOE any instance where the manufacturer knows or has reason to know that a product uses significantly more energy in normal, real-world performance than as reported in its certification for such product using the approved test procedure. (NRDC, No. 39.1 at p. 6) In such cases, NRDC recommended that DOE establish a protocol for consulting with the manufacturer to determine if a waiver is appropriate. *Id.* Additionally, the Appliance Standards Awareness Project and Consumers Union generally commented that the number of manufacturers requesting waivers is a good indicator that the test procedures being used are out-of-date, and that such a practice would alert DOE to the need to reexamine the relevant rule. (Appliance Standards Awareness Project, Public Meeting Transcript, No. 103 at pp. 34–35; Consumers Union, No. 74.1 at p. 5)

Although various commenters supported a mandatory waiver requirement, DOE is not adding such a requirement to its final rule. While DOE appreciates that such a requirement may serve to prevent manufacturers from deliberately circumventing the test procedures, DOE believes that its existing regulations already provide adequate protections against such circumvention. DOE notes that coverage of a product is not dependent upon whether there is a test procedure that can test a product. Thus, regardless of whether a waiver is obtained for a product that is not covered by a test procedure, a manufacturer must still meet the required energy conservation standard for the product if it is a covered product under DOE's regulatory authority.

Consequently, DOE has multiple processes to address the testing concerns that are not explicitly addressed by DOE's test procedure. First, manufacturers can submit test procedure related questions through DOE's Test Procedure Guidance process. *See http://www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1* for additional information. Alternatively, DOE's regulations allow manufacturers to apply for a waiver when a manufacturer determines that a given basic model contains one or more design features that prevent testing in accordance with DOE's test procedure. Because new models that cannot be tested using the existing test procedure must obtain a waiver before they are sold, DOE must do better in processing waivers quickly and appropriately. The Department renews its commitment to act swiftly on waiver requests and to update our test procedures promptly to address issues raised by waivers. The Department is also adding an electronic method of submission (*AS_Waiver_Requests@ee.doe.gov*) and revising the mailing address in today's final rule. Second, DOE recognizes that product innovations will always outpace DOE's rulemaking efforts. Thus, to encourage waivers and prevent the Department's administrative waiver process from delaying or deterring the introduction of novel, innovative products into the marketplace, DOE, as a matter of policy, will refrain from enforcement actions related to a waiver request that is pending with the Department.

L. Additional Product Specific Issues

1. Entity Responsible for Certification and Compliance for Walk-In Coolers or Freezers (WICFs)

In the January WICF Test Procedure NOPR, DOE proposed to have a separate test procedure for the WICF envelope and WICF refrigeration system. 75 FR 186. Due to the separate test procedures for each of the components being considered by the Department, DOE explored the idea that the "manufacturer" of an entire walk-in system (*i.e.,* envelope and refrigeration system combined) could be a third party assembler (*i.e.,* essentially a contractor who assembles the walk-in from the separate components in the field). The third party assembler may even be the end-user or owner of the equipment.

DOE received a number of comments about this proposed definition in the January WICF Test Procedure NOPR. DOE addressed these comments in the September 2010 NOPR, where DOE proposed that the "manufacturer" is the entity responsible for compliance with any DOE energy conservation standard. 75 FR 56806. EPCA defines the term "manufacture" as "to manufacture, produce, assemble, or import." (42 U.S.C. 6291(10)) DOE proposed in the September 2010 NOPR that the term "manufacturer" be applied to the entity responsible for designing and/or selecting the various components used in a WICF. 75 FR 56806.

Some stakeholders agreed with DOE's proposed definition of manufacturer. Arctic Industries believes that the person who chooses the specifications for a WIFC should be responsible for its efficiency. (Arctic Industries, Public Meeting Transcript, No. 103 at p. 293) Kysor stated that the installation of the components to create a complete walk-in is accomplished by several different parties: a panel installer, a refrigeration installer, and an electrical contractor, for example. Due to the number of parties involved, Kysor agreed with DOE's clarification of the entity responsible as the person who has control of the completed walk-in and all of its components. (Kysor, No. 68.1 at p. 3) American Panel agreed with the proposed definition but suggested an addition. American Panel stated that the definition of "manufacture" should be modified to state the manufacturer of a WICF means any person who specifies, manufactures, produces, assembles or imports a WICF. American Panel also recommended that the definition of manufacturer should include a food service consultant who prepares a written specification of equipment to be provided on a project. (American Panel, No. 59.1 at p. 4)

Other stakeholders stated that the installer should be involved in WICF compliance. CrownTonka stated that they would be in favor of a definition that held the assembler responsible for compliance, if the definition encompassed the installer. CrownTonka explained that even if components comply, a poor installation will not cause efficiency gains to be realized. (EERE–2008–BT–STD–0015, CrownTonka, Public Meeting Transcript, No. 44 at p. 323) Craig stated that only the installers, who assemble the product in the field, can verify the energy usage for WICFs. (Craig, Public Meeting Transcript, No. 103 at p. 27) Craig expressed concern that unless installers ensure the integrity of the material that goes into a WICF, installers are excluded from the definition of manufacturer even though they can have more impact on the energy use of a WICF than the manufacturers because energy usage depends on proper installation, which the manufacturer cannot control. (Craig, Public Meeting Transcript, No. 103 at p. 25) CrownTonka, Thermalrite, and ICS, also known as the Joint Comment, stated that since the "matched" ratings are applied to remote condensing units the certification should be done by the installer instead of the manufacturer, which would increase the number of responsible parties. (EERE–2008–BT–TP–0014, Joint Comment, No. 2.3.006 at p. 3) Hill Phoenix stated that the responsibility for infiltration testing and compliance should be placed on the installer. (EERE–2008–BT–TP–0014,

Hill Phoenix, No.2.3.007 at p. 2) Kysor recommended that certification should be done by someone at the final site who approves the assembly because energy use depends on the final assembly. (EERE–2008–BT–STD–0015, Public Meeting Transcript, Kysor, No. 44 at p. 43)

Many stakeholders were concerned about the consequences of making the assembler responsible for certifying the entire walk-in. NEEA implied that the proposed definition of a WICF manufacturer was too broad. (NEEA, Public Meeting Transcript, No. 103 at p. 295) NEEA also stated that the current framework would be difficult to enforce (EERE–2008–BT–TP–0014, NEEA, No. 2.3.005 at p. 1) CA State IOU recommended that DOE carefully consider how this rule would be enforced before proceeding under the proposed regulatory framework, which shifts compliance documentation from tens of manufacturers to thousands of contractors and designers, converts this appliance standard to a building standard, and also shifts enforcement from DOE to over 3,000 building departments. (EERE–2008–BT–STD–0015, CA State IOU, No. 60 at p. 4)

Specifically, some stakeholders expressed concern about the cost burden that would be imposed upon the defined "manufacturer." Heatcraft stated that it would be very burdensome for component manufacturers to be responsible for testing different components that they did not manufacture. (EERE–2008–BT–STD–0015, Public Meeting Transcript, Heatcraft, No. 44 at p. 318) Craig stated that the proposals in the September 2010 NOPR were overly burdensome, and costs associated with the proposed regulations would likely put three quarters of the manufacturers out of business. (Craig, Public Meeting Transcript, No. 103 at p. 24) Manitowoc stated that if the assembler is a local contractor, the contractor may not be in a position to handle the responsibility of demonstrating compliance with an overall performance standard. Manitowoc worried that assemblers may get out of the business for fear of noncompliance consequences. (EERE–2008–BT–STD–0015, Public Meeting Transcript, Manitowoc, No. 44 at p. 30) Hill Phoenix stated that requiring manufacturer certification of installers would place undue burden and cost on both manufacturers and consumers. (EERE–2008–BT–TP–0014, Hill Phoenix, No. 1.2.023 at p. 1)

Various stakeholders suggested other compliance, certification, and enforcement paths the DOE could follow. NWEEA and NPCC stated that one way DOE could ensure compliance with these standards is by conventional means at the manufacturer level for WICF system components. (EERE–2008–BT–STD–0015, NWEEA and NPCC, No. 58 at p. 3) Kysor emphasized that certification and compliance to a panel standard should be incumbent upon the panel manufacturer. (Kysor, No. 68.1 at p. 1) Similarly, Master-Bilt stated that door manufacturers should rate their own doors. (EERE–2008–BT–TP–0014, Master-Bilt, No. 2.3.014 at p. 2) Both Kysor's and Master-Bilt's comments are examples of a component level certification approach. Hill Phoenix argued that the definition of walk-in manufacturer should be clarified because in the current definition, the compliance responsibility could be applied to several entities, including the end user, consulting engineer/architect, dealer, wholesaler, and component manufacturer. Hill Phoenix recommended responsibility fall on three possible areas: The component manufacturers, the installer, and the entity that specifies all of the components of a walk-in envelope. Hill Phoenix also recommended that DOE adopt a regulatory framework similar to NEEA's, in which the component manufacturers are responsible for certifying their own components, the installer is responsible for infiltration, and the entity responsible for specifying the components would be responsible for the efficiency of the whole envelope. (Hill Phoenix, No. 70.1 at p. 3; EERE–2008–BT–TP–0014, Hill Phoenix, No. 2.3.007 at p. 1) Kysor stated that the manufacturer of each component should be responsible for testing that component, but should have nothing to do with the finished product in terms of compliance. (Kysor, No. 44 at p. 317, Standards Preliminary Analysis Public Meeting) Kysor explained that the overall installation is typically controlled or at least monitored by the permitting agency, general contractor, building certification official, or owner. These are the only parties in contact with all involved component manufacturers and installers and are the only parties in a position to have complete information from each component manufacturer for compilation; therefore, they are the only parties that could demonstrate compliance of the completed walk-in. (EERE–2008–BT–STD–0015, Kysor, No. 53 at p. 2; EERE–2008–BT–STD–0015, Public Meeting Transcript, Kysor, No. 44 at p. 326). Kysor also stated that DOE could request test data and certification at any time from the supplier for verification. Also, Kysor requested that the manufacturers be allowed to witness any verification testing of their products because testing labs do not always use the same equipment and often disagree on method or interpretation. (Kysor, 68.1 at p. 3) AHRI suggested that DOE should have two compliance paths: a prescriptive path and a performance path, similar to the International Energy Conservation Code. (EERE–2008–BT–STD–0015, Public Meeting Transcript, AHRI, No. 44 at p. 333)

Stakeholders suggested options like labeling and check sheets to make certification, compliance and enforcement easier. Ingersoll Rand stated that a program with a compliance check sheet would be good because the installer would just have to make sure the walk-in incorporates compliant components and would not have to do actual testing. (EERE–2008–BT–STD–0015, Public Meeting Transcript, Ingersoll Rand, No. 44 at p. 343) CrownTonka agreed with Ingersoll Rand's suggestion and stated that it would be self-regulating. (EERE–2008–BT–STD–0015, Public Meeting Transcript, CrownTonka, No. 44 at p. 343) NEEA stated that the overall U-value can be enforced by attaching paperwork to the shipped panels or a label similar to NFRC-rated fenestration products. NEEA continued to suggest that labeled products would make it easier for the manufacturer to calculate a performance metric. (EERE–2008–BT–TP–0014, NEEA, 2.3.005 at p. 1; EERE–2008–BT–TP–0014, NEEA, 2.3.005 at p. 2) Joint Utilities, which comprises of Southern California Edison, Pacific Gas & Electric, San Diego Gas & Electric, Sacramento Municipal Utility District, and CA State IOU stated that products intended for walk-ins must have certified ratings and have a label and catalog information that indicates that these products are approved for walk-ins. (EERE–2008–BT–TP–0014, Joint Utilities, 2.3.003 at p. 6; EERE–2008–BT–STD–0015, CA State IOU, No. 60 at p. 4) Carpenter Co. suggested WICF components be labeled with their energy consumption to streamline inspection and eliminate confusion when components are from different manufacturers. (EERE–2008–BT–TP–0014, Carpenter Co., 2.3.012 at p. 2) Adjuvant, Kysor, CrownTonka, and ICS all supported labeling WICF components. (EERE–2008–BT–STD–0015; Public Meeting Transcript, Adjuvant, No. 44 at p. 52; EERE–2008–BT–STD–0015, Public Meeting Transcript, Kysor, No. 44 at p. 55; EERE–2008–BT–STD–0015, CrownTonka and ICS, No. 56 at p. 1) NWEEA and NPCC suggested

component labels that could be checked by field inspectors as part of the compliance process. (EERE–2008–BT–STD–0015, NWEEA and NPCC, No. 58 at p. 3)

Stakeholders also discussed who would enforce the WICF standards. Manitowoc stated that a framework exists for oversight by health inspectors and oversight of structural and other elements, and recommended that DOE examine the existing framework to see if it can support energy efficiency measures. (EERE–2008–BT–STD–0015, Public Meeting Transcript, Manitowoc, No. 44 at p. 48) Adjuvant stated that in its experience with the California Title 20 standard, building and health inspectors could not inspect for energy efficiency because it was impossible to tell if a walk-in complied with energy regulations just by looking at it. (EERE–2008–BT–STD–0015, Public Meeting Transcript, Adjuvant, No. 44 at p. 52) CA Codes and Standards stated that building officials trying to evaluate a performance standard (*e.g.,* tradeoffs between components) would add cost to the States because inspection would be more difficult. (EERE–2008–BT–STD–0015, Public Meeting Transcript, CA C&S, No. 44 at p. 335) Joint Utilities stated that the local jurisdictions may not have the technical background to assure that compliant refrigeration equipment selections have been made. (EERE–2008–BT–TP–0014, Joint Utilities, No. 2.3.003 at p. 5) Craig recommended that enforcement could occur from sampling, and field testing could ensure representative calculations. (EERE–2008–BT–TP–0014, Craig, 2.3.013 at p. 6)

In light of the comments, DOE is modifying the definition of manufacturer as it relates to WICFs in the final rule. DOE notes that the current legislative design standards set forth by the Energy Independence and Security Act of 2007 (EISA 2007) provide the framework for a component-based approach since each design standard is based on the performance of a given component of the WICF. Using this approach, component manufacturers would be the entity responsible for certifying compliance of the components they manufacture for walk-in applications and ensuring compliance with the applicable standards for those components. This system would follow Master-Bilt's suggestion that door manufacturers certify their own doors. Since the current Federal standards are component level standards, DOE is able to make certification as conventional as possible, as suggested by NWEEA and NPCC. Enabling component manufacturers to certify their own components would also relieve testing and cost burden from the assembler, which s an issue identified by Heatcraft, Craig, and Manitowoc, and Hill Phoenix.

DOE also is specifying certain requirements for the manufacturers or assemblers of complete walk-ins, whether they are assembled in a factory or on-site. Even if the component manufacturers test and certify their components to the Department as required by this final rule, DOE must still ensure that only compliant components are used in walk-ins. Therefore, DOE notes that definition of manufacturer being adopted today extends the compliance responsibility to both the component manufacturer and the assembler even though the component manufacturer is the sole entity responsible for certification. Assemblers of the complete walk-in system are required to use only components that are certified to meet the Federal energy conservation standards in the assembled walk-in. The manufacturer or assembler of the complete walk-in does not have to certify each walk-in, as this could be unduly burdensome. Rather, DOE anticipates that the market will police itself and report noncompliant installations to the Department, especially if component manufacturers educate their purchasers about compliance requirements. This approach is very similar to the compliance pathways proposed by Ingersoll Rand and CrownTonka, Hill Phoenix, and Kysor.

In this final rule, DOE adopts a framework for enforcement in which DOE will determine whether the manufacturer of the component or manufacturer or assembler of the complete walk-in (or both) is responsible for noncompliance on a case-by-case basis. If a component manufacturer certifies a noncompliant component as compliant, or if the component is not properly tested and certified, DOE would initiate an enforcement action against the component manufacturer. If a walk-in is assembled from non-compliant components, DOE would initiate an enforcement action against the manufacturer or assembler of the complete walk-in. This approach provides DOE with flexibility in enforcing WICF standards. Although the outlined approach may not reduce the number of manufacturers, as CA State IOU warned, this approach clearly identifies who is responsible for compliance and certification, and how the standard will be enforced.

2. Basic Model Definition for Walk-In Coolers or Freezers (WICFs)

In the January WICF Test Procedure NOPR, DOE proposed to define "basic model" as all units of a given type of walk-in equipment manufactured by a single manufacturer, and—(1) With respect to envelopes, which do not have any differing construction methods, materials, components, or other characteristics that significantly affect the energy consumption characteristics. (2) With respect to refrigeration systems, which have the same primary energy source and which do not have any differing electrical, physical, or functional characteristics that significantly affect energy consumption. DOE requested comment on this proposed approach. 75 FR 189.

In the September WICF Test Procedure SNOPR, DOE proposed that envelope models grouped within a basic model could still differ in terms of non-energy characteristics (*e.g.,* color, shelving, metal skin material type, exterior finish, or door kick plate) but any change to a characteristic that affects normalized energy consumption (*e.g.* panel systems, door systems, electrical components, and infiltration reduction devices) would constitute a new basic model. (75 FR 55072)

Later in the September 2010 NOPR, DOE described the concept of "basic model" as a group of manufacturers' models that have essentially identical energy consumption characteristics such that the manufacturer would derive the efficiency rating for all models in the group from testing sample units of these models. DOE anticipated that applying this concept within the energy conservation program would streamline certification and compliance and alleviate burden on manufacturers by reducing the amount of testing they must do to rate the efficiencies of their products. DOE asked for comment on how manufacturers determine that a particular model constitutes a basic model, and what modifications to an existing model would make it a new basic model subject to the new model certification requirement. 75 FR 56798–56799.

Interested parties, including many manufacturers of walk-in coolers and freezers, submitted comments on the basic model concept to both this rulemaking docket and the WICF test procedure rulemaking docket. For consistency, all comments pertaining to basic model of WICF will be addressed in this rulemaking.

A large number of interested parties expressed concern that DOE's typical approach of using the basic model

concept to categorize equipment would not be applicable to walk-in coolers and freezers. American Panel, Arctic Industries, Bally, Craig Industries, Heatcraft, and Hill Phoenix all commented that developing a basic model definition or categorization could be difficult because there are a vast number of variations in walk-in shape and size that could each be a different basic model. (American Panel, Public Meeting Transcript, No. 103 at p. 89; Arctic Industries, Public Meeting Transcript, No. 103 at p. 67; EERE–2008–BT–TP–0014, Bally, No. 46 at p. 1; Craig Industries, Public Meeting Transcript, No. 103 at p. 59; Heatcraft, No. 65.1 at p. 1; EERE–2008–BT–TP–0014, Hill Phoenix, No. 2.3.007 at p. 3) Bally, Hill Phoenix, and Kysor Panel pointed out that walk-ins are often or, for some manufacturers, always engineered to order or custom designed for a particular customer. (Bally, No. 46 at p. 1; Kysor Panel, Public Meeting Transcript, No. 103 at p. 88; Kysor Panel, No. 68.1 at p. 1; Hill Phoenix, No. 70.1 at p. 1; EERE–2008–BT–TP–0014, Hill Phoenix, No. 2.3.007 at p. 1) Craig Industries, Heatcraft and Master-Bilt commented that the basic model concept as defined by DOE could cause a large testing burden on the WICF industry, and AHRI urged DOE to adopt a practical definition of basic model to reduce testing burden. (Craig Industries, Public Meeting Transcript, No. 103 at p. 60; Heatcraft, No. 65.1 at p. 1; EERE–2010–BT–TP–0014, Heatcraft, No. 2.3.009 at p. 1; EERE–2010–BT–TP–0014, Master-Bilt, No. 2.3.014 at p. 1; EERE–2010–BT–TP–0014, AHRI, No. 2.3.015 at p. 3) Craig Industries and Hill Phoenix commented on the particular burden of testing on small businesses under DOE's proposed basic model approach. (EERE–2010–BT–TP–0014, Craig Industries, No. 2.3.013 at p. 2; H EERE–2010–BT–TP–0014, Hill Phoenix, No. 2.3.007 at p. 3) Carpenter added that DOE's proposed basic model concept would be costly and cumbersome, and that 75% of WICF envelopes are custom designed. (EERE–2010–BT–TP–0014, Carpenter, No. 2.3.012 at p. 1) American Panel, Hill Phoenix and Kysor Panel further stated that model numbers are typically not used in the WICF industry, so DOE should not define basic model for walk-ins in terms of model numbers; American Panel further suggested tracking and keeping records of WICF equipment by manufacturing number and date of manufacture or date code. (American Panel, No. 59.1 at p. 4; Kysor Panel, No. 68.1 at p. 1; Kysor Panel, Public Meeting Transcript, No. 103 at p. 88; Hill Phoenix, No. 70.1 at p. 1; EERE–2010–BT–TP–0014, Hill Phoenix, No. 2.3.007 at p. 2) Craig Industries and Kysor Panel added that instead of model number, WICFs are characterized by some aspect of size. (Craig Industries, Public Meeting Transcript, No. 103 at p. 97; Kysor Panel, Public Meeting Transcript, No. 103 at p. 99) Not all interested parties disagreed with the basic model concept: CPI supported the basic model definition because it distinguishes envelopes that vary in normalized energy consumption from those that differ only cosmetically, and NRDC agreed that a basic model for WICF would provide a baseline to compare envelopes from different manufacturers. (EERE–2010–BT–STD–0015, CPI, No. 51 at p. 2; EERE–2010–BT–TP–0014, NRDC, No. 2.3.008 at p. 2)

Despite the supportive comments from CPI and NRDC, DOE notes that the basic model concept is particularly suited for instances where manufacturers make products that tend to be the same with respect to energy consumption; in that case the basic model concept would reduce the number of models that would need to be tested and certified. However, the comments from AHRI, American Panel, Arctic Industries, Bally, Craig Industries, Heatcraft, Hill Phoenix, Kysor Panel, and Master-Bilt indicate that most walk-ins would tend to differ in energy consumption, making each walk-in effectively a different basic model. Therefore, DOE realizes the need to carefully consider its basic model concept as it applies to walk-ins.

Many interested parties offered suggestions on how to improve the basic model concept so that it could be applied to walk-ins. Some suggested DOE adopt a calculation methodology or allow manufacturers to use a calculation methodology to reduce the number of tests. Hill Phoenix stated that allowing manufacturers to test a limited number of models and then calculate performance of other models would reduce burden. (EERE–2010–BT–TP–0014, Hill Phoenix, No. 2.3.007 at p. 3) Arctic Industries and Craig Industries recommended a calculation or formula based on size. (EERE–2010–BT–CE–0014, Public Meeting Transcript, Arctic Industries, No. 103 at p. 67; EERE–2010–BT–TP–0014, Craig Industries, No. 2.3.013 at p. 6) Heatcraft, Hill Phoenix and SBA stated that manufacturers could calculate the energy consumption based on component test results. (EERE–2010–BT–CE–0014, Heatcraft, No. 65 at p. 1; EERE–2010–BT–CE–0014, Hill Phoenix, No. 70 at p. 1; EERE–2010–BT–TP–0014, SBA, No. 2.3.011 at p. 2) Other interested parties, specifically American Panel, Heatcraft, and SBA, agreed with an approach DOE considered in the Test Procedure SNOPR to group basic models into a more general "family" and only require manufacturers to certify some basic models within the family. (75 FR 55072) (EERE–2010–BT–TP–0014, American Panel, No. 2.3.001 at p. 1; EERE–2010–BT–TP–0014, Heatcraft, No. 2.3.009 at p. 2; EERE–2010–BT–TP–0014, SBA, No. 2.3.011 at p. 3) The Joint Comment recommended that a basic model could represent a family of models as long as a linear relationship could be established with regard to energy consumption over the range of models. (EERE–2010–BT–TP–0014, Joint Comment, No. 1.3.019 at p. 1) Heatcraft also suggested that the family of models could include units of similar design, construction, and function, which would reduce the number of basic models and related equipment tests. (EERE–2010–BT–CE–0014, Heatcraft, No. 65 at p. 1; EERE–2010–BT–TP–0014, Heatcraft, No. 2.3.009 at p. 1) American Panel and Bally suggested DOE allow manufacturers to test one basic unit, with characteristics specified by DOE, for purposes of certifying their walk-ins to DOE. (EERE–2010–BT–CE–0014, Public Meeting Transcript, American Panel, No. 103 at p. 89; EERE–2010–BT–CE–0014, Bally, No. 46 at p. 1)

The majority of interested parties, however, recommended that DOE implement the basic model concept on a component level as this would remove the difficulty of testing and/or certifying different size walk-ins that would have different energy consumption. For instance, American Panel, Craig Industries, Hill Phoenix, and Kysor Panel stated that DOE should define a basic model of a panel which would be distinguished on the basis of insulation value or panel thickness as this characteristic is most closely indicative of the panel's performance. (EERE–2010–BT–TP–0014, American Panel, No. 2.3.001 at p. 1; EERE–2010–BT–CE–0014, Public Meeting Transcript, American Panel, No. 103 at p. 89; EERE–2010–BT–CE–0014, Public Meeting Transcript, Craig Industries, No. 103 at p. 60; EERE–2010–BT–CE–0014, Hill Phoenix, No. 70 at p. 1; EERE–2010–BT–TP–0014, Hill Phoenix, No. 2.3.007 at p. 2; EERE–2010–BT–CE–0014, Kysor Panel, No. 68 at p. 1) Kysor stated that basic model testing should consist of only an R-value test as it distinguishes panels based only on R-value, but NEEA suggested that basic models be defined on the basis of various factors including foam type, panel thickness, panel skin type(s),

framing factor, and panel gasket and joining system. (EERE–2010–BT–CE–0014, Public Meeting Transcript, Kysor Panel, No. 103 at p. 88 and 99; EERE–2010–BT–CE–0014, Kysor Panel, No. 68 at p. 1; EERE–2010–BT–TP–0014, NEEA, No. 2.3.005 at p. 7) Carpenter suggested implementing individual WICF component certifications instead of the proposed approach. (EERE–2010–BT–TP–0014, Carpenter, No. 2.3.012 at p. 1) AHRI recommended that basic model be based on panel design characteristics to minimize test burden. (EERE–2010–BT–TP–0014, AHRI, No. 2.3.015 at p. 2) Owens Corning agreed that one test could represent all the panels of the same configuration. (EERE–2010–BT–TP–0014, Owens Corning, No. 2.3.002 at p. 2) NEEA also agreed with a model that does not rely on walk-in size as that would simplify testing and reporting. (EERE–2010–BT–TP–0014, NEEA, No. 2.3.005 at p. 9)

Although most comments about component certification specifically pertained to panels, some interested parties commented on refrigeration. AHRI urged DOE to group refrigeration models into the same basic model even if there was some difference in energy consumption. (EERE–2010–BT–TP–0014, AHRI, No. 2.3.015 at p. 2) Heatcraft suggested a more detailed system whereby a basic model would consist of units designed with interchangeable components such that data from component testing and calculation could predict the energy consumption of each unit with minimal verification testing necessary. (EERE–2010–BT–TP–0014, Heatcraft, No. 2.3.009 at p. 1)

DOE agrees with the suggestion of applying the basic model concept at the component level. Since DOE is adopting a component-level approach to certification as described in the section above (*i.e.,* definition of manufacturer), DOE is defining a basic model for each of the key components of a walk-in, rather than defining a basic model for the entire walk-in. DOE emphasizes that although basic model is defined on the component level, it is still implemented in the same manner as it is in the rest of DOE's appliance standards program; that is, basic model consists of equipment that is essentially the same with respect to energy consumption, efficiency, or other measure of performance. For example, panels are grouped into basic models not just on the basis of thickness or R-value as suggested by American Panel, Craig Industries, Hill Phoenix, and Kysor Panel, but must consider various design characteristics that could affect performance, as stated by AHRI and NEEA, which could include, but may not be limited to, foam type, panel thickness, and framing factor.

Some interested parties commented on recertification provisions. Craig Industries stated that a restrictive definition of basic model would discourage product improvement because of the corresponding testing expense. (EERE–2010–BT–CE–0014, Public Meeting Transcript, Craig Industries, No. 103 at p. 94) Kysor stated that recertification should only be required if the R-value changes. (EERE–2010–BT–CE–0014, Kysor, No. 68 at p. 1) DOE notes that recertification is only required if a model is re-rated to claim new efficiency or if the model is modified such that testing no longer supports the certified rating. (*See* discussion in Section III.E.1.).

3. Basic Model and Manufacturer Model Number Reporting for Distribution Transformers, WICFs, and External Power Supplies

As discussed above (Section III.B.), DOE is adopting most of the reporting requirements that it proposed in the September 2010 NOPR. For a few specific products, however, DOE is not adopting the requirement to report the individual manufacturer model numbers. Commenters argued against reporting manufacturer model numbers for distribution transformers and WICFs. (*See, e.g.,* NEMA, No. 84.1 at p. 8 (distribution transformers); Hill Phoenix, No. 70.1 at p. 1 (WICFs)) ABB suggested certification reports for distribution transformers should be made on the basis of kVA groupings in lieu of model numbers. (ABB, No. 53.1 at p. 4) GE Prolec argued that the concept of a manufacturer's model does not fit the characteristics of the distribution transformers industry. (GE Prolec, No. 95.1 at p. 2) Distribution transformers not only do not have model numbers, but due to the custom nature of the product, would have to report thousands of models annually. (*See* GE Prolec, No. 96)

DOE is adopting a requirement for manufacturers of distribution transformers to report the characteristics of the most and least efficient basic models within the kVA grouping. The term "kVA grouping" is defined to mean a group of basic models, which all have the same kVA rating, have the same insulation type (*i.e.,* low-voltage dry-type, medium-voltage dry-type or liquid-immersed), have the same number of phases (*i.e.,* single-phase or three-phase), and, for medium-voltage dry-types, have the same BIL group rating (*i.e.,* 20–45 kV BIL, 46–95 kV BIL or greater than or equal to 96 kV BIL). DOE notes that by certifying using these broad groupings in lieu of reporting basic models, the manufacturer assumes the risk that if one model in a kVA grouping is found noncompliant, all of the models in that grouping are noncompliant. In an enforcement action, DOE should be able to determine all of the individual models that fall within a kVA grouping certification using the required certification information and basic model design and testing information. While DOE is not requiring a requirement for manufacturers to tell DOE all the individual model numbers that fall into a kVA grouping, DOE expects manufacturers to make this information available, as necessary, during enforcement actions.

Generally, the WICF comments in opposition to reporting manufacturer model numbers were based on DOE's proposal, which required certification of each basic model of completed WICF. (*See, e.g.,* Hill Phoenix, No. 70.1 at p. 1) Kysor, however, specifically opposed requiring reporting of model numbers for the panel component of a WICF. (Kysor, No. 68.1 at p. 2) Because DOE has adopted a reporting requirement for the components of the WICF rather than for the completed product, DOE does not have sufficient information to determine whether reporting of model numbers for WICF components is feasible. Accordingly, this final rule does not require WICF manufacturers to report manufacturer model numbers. DOE intends to revisit this issue in a future rulemaking. Upon the effective date specified in this final rule, manufacturers of WICF components are required to certify that each basic model of WICF component complies with the applicable standard.

For external power supplies, DOE is adopting product-specific regulatory text to permit certification on the basis of either a basic model or a design family. Irrespective of the model grouping option chosen, the certification report must include the manufacturer model numbers covered by the basic model or the design family. DOE notes that by certifying using the broader grouping of design family in lieu of reporting basic models, the manufacturer assumes the risk that if one model in a design family is found noncompliant, all of the models in that grouping are noncompliant.

M. Additional Issues for Which DOE Sought Comment in September 2010 NOPR

1. Verification Testing

In the September 2010 NOPR, DOE requested comments on a variety of issues relating to the establishment of a potential verification program for covered products and covered equipment. Specifically, DOE requested comment about the requirements and details for verification testing programs (*e.g.,* the use of an independent testing laboratory and a specific number of samples that should be randomly tested for each product). DOE received numerous comments from a variety of interested parties. 75 FR 56805. DOE plans to consider these comments in the next certification, compliance, and enforcement rulemaking. DOE continues to believe that a potential verification testing program may be an integral part to meeting DOE's compliance and enforcement objectives and will continue to accept comments relating to a DOE verification program.

2. Voluntary Industry Certification Programs

DOE noted in the September 2010 NOPR that it was not proposing modifications to DOE's provisions defining voluntary industry certification programs (VICP) at that time. However, because the Department is considering imposing a verification testing requirement for all product and equipment types, which may entail changes to the current provisions governing VICPs, DOE sought comment regarding the criteria defining VICPs, and the use of VICPs in DOE's certification, compliance, and enforcement programs for both consumer products and commercial and industrial equipment. Specifically, DOE requested comment about the actions taken by the VICP in conjunction with DOE when a unit is found to have failed the verification testing program of the VICP.

3. Certification, Compliance and Enforcement for Electric Motors

Although DOE did not propose revisions to the requirements for electric motors in the September 2010 NOPR, DOE noted in the NOPR that it intends to propose to move and harmonize, where possible, the certification, compliance, and enforcement provisions for electric motors in new Part 429, as well as add an annual certification requirement, in a second rulemaking. As such, DOE sought comment on the existing provisions for electric motors, including any previous proposals for small electric motors and any changes DOE should consider in the next rulemaking applicable to these products. With regard to an annual certification requirement, DOE specifically sought comment on if and how the certification compliance numbers for electric motors could be modified to clearly demonstrate compliance when there is a change in the Federal energy conservation standards for these products.

Because DOE did not propose to amend any provisions with respect to electric motors, DOE has made amendments to the language of sections 431.403 through 431.407. These amendments make it clear that the general provisions in these sections relate to and maintain the status quo for electric motors.

4. Revisions to Sampling Plans for Certification Testing

In the September 2010 NOPR, DOE noted that it is considering adding sampling plans and tolerances for other features of covered products and covered equipment which impact the water or energy characteristics of a product. DOE sought comment on this approach, and the methodologies DOE should consider if it decides to extend the sampling provisions to features other than the regulatory metrics.

In response to these four broad categories, DOE received a plethora of feedback and valuable suggestions for it to consider in the next certification, compliance, and enforcement rulemaking. At that time, DOE will further discuss and address the general issues that were noted by interested parties in this docket.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site, *http://www.gc.doe.gov.*

DOE reviewed the certification, compliance, and enforcement requirements being adopted in today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. As discussed in more detail below, DOE found that because a subset of the certification, compliance, and enforcement regulations have not previously been required of manufacturers, all manufacturers, including small manufacturers, could potentially experience a financial burden associated with new certification, compliance, and enforcement requirements. While examining this issue, DOE determined that it could not certify that the final rule, if promulgated, would not have a significant effect on a substantial number of small entities. Therefore, DOE has prepared a final regulatory flexibility analysis (FRFA) for this rulemaking. The FRFA describes potential impacts on small businesses associated with certification, compliance, and enforcement requirements on covered products and covered equipment. This final rule includes changes made to the FRFA in response to the comments from interested parties on the September 2010 NOPR.

1. Reasons for the Final Rule

The reasons for this final rule are discussed elsewhere in the preamble and not repeated here.

2. Objectives of and Legal Basis for the Final Rule

The objectives of and legal basis for the final rule are discussed elsewhere in the preamble and not repeated here.

3. Description and Estimated Number of Small Entities Regulated

DOE used the small business size standards published on January 31, 1996, as amended, by the SBA to determine whether any small entities would be required to comply with the rule. 61 FR 3286; *see also* 65 FR 30836, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (September 5, 2000).

The size standards are codified at 13 CFR Part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

This final rule potentially impacts manufacturers of almost all types of covered products and covered equipment subject to DOE's energy conservation, water conservation, and design standards.

TABLE IV.1—SMALL BUSINESS CLASSIFICATIONS FOR COVERED PRODUCTS AND COVERED EQUIPMENT

Covered product or covered equipment type	NAICS code	NAICS definition of small manufacturer (number of employees)	Total number of small manufacturers
Residential refrigerators, residential refrigerator-freezers, and residential freezers	335222	≤1000	1
Room air conditioners	333415	≤750	0
Residential central air conditioners and heat pumps	333415	≤750	13
Small-duct, high velocity	333415	≤750	2
Through-the-wall air conditioners and heat pumps	333415	≤750	1
Residential water heaters	335228	≤500	6
Residential furnaces and boilers	333415	≤750	25
Dishwashers	335228	≤500	0
Residential clothes washers	335224	≤1000	1
Clothes dryers	335224	≤1000	0
Direct heating equipment	333414	≤500	12
Cooking products	335221	≤750	2
Pool heaters	333414	≤500	1
Fluorescent lamp ballasts	335311	≤750	11
General service fluorescent lamps	335110	≤1000	1
Incandescent reflector lamps	335110	≤1000	0
Ceiling fans	335211	≤750	91
Ceiling fan light kits	335211	≤750	91
Torchieres	335121	≤500	404
Medium base compact fluorescent lamps	335110	≤1000	70
Dehumidifiers	335211	≤750	0
External power supplies	335999	≤500	250
General service incandescent lamps	335110	≤1000	67
Candelabra base incandescent lamp	335110	≤1000	67
Intermediate base incandescent lamp	335110	≤1000	67
Commercial refrigeration equipment	333415	≤750	20
Commercial warm air furnaces	333415	≤750	3
Commercial packaged boilers	333414 or 332410	≤500	13
Commercial package air-conditioning and heating equipment	333415	≤750	1
Packaged terminal air conditioners and heat pumps	333415	≤750	6
Single package vertical units	333415	≤750	5
Commercial water heaters	333319	≤500	7
Automatic commercial ice makers	333415	≤750	2
Commercial clothes washers	333312	≤500	0
Distribution transformers	335311	≤750	45
Illuminated exit signs	335129	≤500	269
Traffic signal modules and pedestrian modules	335129	≤500	269
Refrigerated bottled or canned beverage vending machines	333311	≤500	6
Walk-in coolers and freezers	333415	≤750	45
Metal halide fixtures	335122	≤500	75
Faucets	332913	≤500	62
Showerheads	332913	≤500	42
Water closets	327111	≤750	9
Urinals	327111	≤750	2
Commercial prerinse spray valves	332919	≤500	8

4. Description and Estimate of Compliance Requirements

Many of the certification, compliance, and enforcement provisions subject to today's final rule are already codified in existing regulations for consumer products and commercial and industrial equipment. As a result, DOE expects the impact on all manufactures to be minimal. Many of the changes being adopted in today's final rule surround expanding DOE's existing certification requirements and could slightly increase the recordkeeping burden. DOE does not expect manufacturers of all types to incur any capital expenditures as a result of the proposals, since the rulemaking does not impose any product specific requirements that would require changes to existing plants, facilities, product specifications, or test procedures. Rather, this rule clarifies sampling requirements and imposes certain data reporting requirements, which may have a slight impact on labor costs.

With regard to sampling for certification testing, this rule clarifies that the minimum number of units tested for certification compliance must be no less than 2 unless a different minimum number is specified. DOE does not believe this specification increases the testing burden on manufacturers because DOE has always required a minimum of 2 samples, if not

more, to achieve a realistic sample mean and to mitigate the risk of a product to be out of compliance. For a small number of products, DOE is proposing statistical sampling procedures that are based on previously established procedures for consumer products and commercial equipment. These procedures are designed to keep the testing burden on manufacturers as low as possible, while still providing confidence that the test results can be applied to all units of the same basic model. In some cases, manufacturers are permitted to use analytical procedures, such as computer simulations, to determine the efficiencies of their products, which will further minimize testing burden.

With regard to certification, the final provisions require manufacturers of covered products and covered equipment to certify annually that their products meet the applicable energy conservation standard, water conservation standard or design standard. It is expected that manufacturers will re-submit the original certification testing information each year for basic models with no modifications affecting energy consumption, water consumption, or design. As DOE currently requires manufacturers to submit certification information at the introduction of a new or modified basic model, DOE does not anticipate that annual certification on products already submitted will add substantial additional burden to manufacturers.

The cost of certification testing will depend on the number of basic models a manufacturer produces. The cost of certifying should be minimal once testing for each basic model has occurred pursuant to the test procedures prescribed by DOE.

DOE estimates that a typical firm would spend approximately 20 hours complying with the additional certification, compliance, and enforcement procedures being considered in today's final rule. This estimate does not include any testing burden, which results from DOE's test procedures. DOE has already considered this burden on all manufacturers in the test procedure rulemakings for individual manufacturers. Instead, this burden represents the time it would take a certification engineer to gather the appropriate data, apply the statistical sampling methods required, and submit the required certification to DOE both for new basic models and on an annual basis. DOE has tried to mitigate the impacts on all manufacturers by aligning the annual certification schedule with the Federal Trade Commission's model submission schedule for consumer products. At most, DOE expects an average manufacturer to allocate 4 of the 20 hours to meeting the annual certification reporting requirement.

DOE notes that these values likely overestimate the manufacturer reporting burden, as the Federal Trade Commission currently requires annual submission of data regarding all basic models distributed into commerce for consumer products, and many voluntary programs also require annual data submission.

In addition, to minimize the impact that annual certification filings may have on manufacturers, DOE has introduced the online CCMS system through which manufacturers would be required to submit their products for certification. In addition, DOE is making available CCMS templates for each product, which clearly lay out the certification requirements for each covered product and covered equipment.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule being considered today.

6. Significant Alternatives to the Rule

This section considers alternatives to the proposals in today's certification, compliance, and enforcement rulemaking. DOE could mitigate the small potential impacts on small manufacturers by reducing the number of samples used, eliminating the annual certification filing, or by expanding the groupings of models. However, DOE strongly believes the proposals in today's rulemaking are essential to a sustainable and consistent enforcement program for all of the covered products and covered equipment. While these alternatives may mitigate the potential economic impacts on small entities compared to the proposed provisions, the ability for DOE to enforce its energy conservation regulations far exceeds any potential burdens. Thus, DOE rejected these alternatives and is adopting the certification, compliance, and enforcement provisions set forth in this rulemaking for all manufacturers of covered products and covered equipment. DOE continues to seek input from businesses that would be affected by this rulemaking and will consider comments received in the development of any final rule.

C. Review Under the Paperwork Reduction Act

1. Description of the Requirements

DOE is developing regulations to implement reporting requirements for energy conservation, water conservation, and design standards, and to address other matters including compliance certification, prohibited actions, and enforcement procedures for covered consumer products and commercial and industrial equipment covered by EPCA.

DOE is adopting provisions to require manufacturers of covered consumer products and commercial and industrial equipment to maintain records about how they determined the energy efficiency, energy consumption, water consumption or design features of their products. DOE is also going to require manufacturers to submit a certification report indicating that all basic models currently produced comply with the applicable standards using DOE's testing procedures, as well as include the necessary product specific certification data. The certification reports are submitted for each basic model, either when the requirements go into effect (for models already in distribution) or when the manufacturer begins distribution of a particular basic model, and annually thereafter. Reports must be updated when a new model is introduced or a change affecting energy efficiency or use is made to an existing model. The collection of information is necessary for monitoring compliance with the conservation standards and testing requirements for the consumer products and commercial and industrial equipment mandated by EPCA.

The information that would be required by these regulations, once effective, and that is the subject of the collection of information, would be submitted by manufacturers to certify compliance with energy conservation, water conservation, and design standards established by DOE. DOE would also use the information to determine whether an enforcement action is warranted and to better inform DOE during a test procedure and energy conservation standards rulemaking.

The certification and recordkeeping requirements for certain consumer products in 10 CFR part 430 have previously been approved by OMB and assigned OMB control number 1910–1400. As part of the September 2010 NOPR, DOE proposed to renew the previously approved certification and recordkeeping requirements, as well as submitted a new proposed certification and recordkeeping requirements for all consumer products and commercial and

industrial equipment subject to certification, compliance, and enforcement regulations to OMB for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* DOE received OMB approval for collecting certification, compliance, and enforcement information for all covered products and covered equipment on February 3, 2011, under OMB control number 1910–1400. These products generally include: Residential refrigerators, refrigerator-freezers, and freezers, room air conditioners, central air conditioners and heat pumps, residential water heaters, residential furnaces and boilers, dishwashers, residential clothes washers, residential clothes dryers, direct heating equipment, conventional cooking tops, conventional ovens, microwave ovens, pool heaters, fluorescent lamp ballasts, general service fluorescent lamps, general service incandescent lamps, incandescent reflector lamps, faucets, showerheads, water closets, urinals, ceiling fans, ceiling fan light kits, torchieres, medium base compact fluorescent lamps, dehumidifiers, external power supplies, candelabra base incandescent lamps, intermediate base incandescent lamps, electric motors, commercial refrigerators, freezers, and refrigerator-freezers, commercial heating, ventilating, and air-conditioning equipment, commercial water heating equipment, automatic commercial ice makers, commercial clothes washers, distribution transformers, illuminated exit signs, traffic signal modules and pedestrian modules, commercial unit heaters, commercial prerinse spray valves, refrigerated bottled or canned beverage vending machines, walk-in coolers and walk-in freezers, and metal halide lamp ballasts and fixtures.

2. Method of Collection

Respondents must submit electronic forms using DOE's on-line CCMS system.

3. Data

The following are DOE estimates of the total annual reporting and recordkeeping burden imposed on manufacturers of all consumer products and commercial and industrial equipment subject to certification, compliance, and enforcement provisions. These estimates take into account the time necessary to develop testing documentation, complete the certification, and submit all required documents to DOE electronically.

OMB Control Number: 1910–1400.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Manufacturers of consumer products and commercial and industrial equipment covered by the rulemakings discussed above.

Estimated Number of Respondents: 2,916.

Estimated Time per Response: Certification reports, 20 hours.

Estimated Total Annual Burden Hours: 58,320.

Estimated Total Annual Cost to the Manufacturers: $4,374,000 in recordkeeping/reporting costs.

D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

DOE reviewed this rule pursuant to Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. In accordance with DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have federalism implications, 65 FR 13735 (March 14, 2000), DOE examined today's final rule and determined that the rule would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. *See* 74 FR 61497. Therefore, DOE has taken no further action in today's final rule with respect to Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729 (February 7, 1996)) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations being adopted in today's final rule meet the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at

http://www.gc.doe.gov). Today's final rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE determined under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that today's proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution. *See* 74 FR 61497–98.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action, which adopts amendments to the Department's certification, compliance, enforcement procedures, is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 430

Confidential business information, Energy conservation, Household appliances, Imports.

10 CFR Part 431

Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on February 7, 2011.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Scott Blake Harris,

General Counsel.

For the reasons stated in the preamble, DOE amends chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read as set forth below:

1. Add new part 429 to read as follows:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

Subpart A—General Provisions

Sec.
429.1 Purpose and scope.
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429.14 Residential refrigerators, refrigerator-freezers and freezers.
429.15 Room air conditioners.
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429.17 Residential water heaters.
429.18 Residential furnaces.
429.19 Dishwashers.
429.20 Residential clothes washers.
429.21 Residential clothes dryers.
429.22 Direct heating equipment.
429.23 Conventional cooking tops, conventional ovens, microwave ovens.
429.24 Pool heaters.
429.25 Television sets. [Reserved]
429.26 Fluorescent lamp ballasts.
429.27 General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.
429.28 Faucets.
429.29 Showerheads.
429.30 Water closets.
429.31 Urinals.
429.32 Ceiling fans.
429.33 Ceiling fan light kits.
429.34 Torchieres.
429.35 Bare or covered medium base compact fluorescent lamps.
429.36 Dehumidifiers.
429.37 Class A external power supplies.
429.38 Non-class A external power supplies. [Reserved]
429.39 Battery chargers.
429.40 Candelabra base incandescent lamps and intermediate base incandescent lamps.
429.41 Electric motors. [Reserved]
429.42 Commercial refrigerators, freezers, and refrigerator-freezers.
429.43 Commercial heating, ventilating, air-conditioning (HVAC) equipment.
429.44 Commercial water heating (WH) equipment.
429.45 Automatic commercial ice makers.
429.46 Commercial clothes washers.
429.47 Distribution transformers.
429.48 Illuminated exit signs.
429.49 Traffic signal modules and pedestrian modules.
429.50 Commercial unit heaters.
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429.52 Refrigerated bottled or canned beverage vending machines.

429.53 Walk-in coolers and Walk-in freezers.
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429.70 Alternative methods for determining efficiency or energy use.
429.71 Maintenance of records.

Appendix A to Subpart B of Part 429—Student's t-Distribution Values for Certification Testing

Subpart C—Enforcement

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429.104 Assessment testing.
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Appendix A to Subpart C of Part 429—Sampling Plan for Enforcement Testing of Covered Products and Certain High-Volume Covered Equipment

Appendix B to Subpart C of Part 429—Sampling Plan for Enforcement Testing of Covered Commercial Equipment and Certain Low-Volume Covered Products

Appendix C to Subpart C of Part 429—Sampling Plan for Enforcement Testing of Distribution Transformers

Authority: 42 U.S.C. 6291–6317.

Subpart A—General Provisions

§ 429.1 Purpose and scope.

This part sets forth the procedures to be followed for certification, determination and enforcement of compliance of covered products and covered equipment with the applicable conservation standards set forth in parts 430 and 431 of this subchapter. This part does not cover motors or electric motors as defined in § 431.12, and all references to "covered equipment" in this part exclude such motors.

§ 429.2 Definitions.

(a) The definitions found in §§ 430.2, 431.2, 431.62, 431.72, 431.82, 431.92, 431.102, 431.132, 431.152, 431.172, 431.192, 431.202, 431.222, 431.242, 431.262, 431.292, 431.302, 431.322, and 431.442 apply for purposes of this part.

(b) The following definitions apply for the purposes of this part. Any words or terms defined in this section or elsewhere in this part shall be defined as provided in sections 321 and 340 of the Energy Policy Conservation Act, as amended, hereinafter referred to as "the Act."

Energy conservation standard means any standards meeting the definitions of that term in 42 U.S.C. 6291(6) and 42 U.S.C. 6311(18) as well as any other water conservation standards and design requirements found in this part or parts 430 or 431.

Manufacturer's model number means the identifier used by a manufacturer to uniquely identify the group of identical or essentially identical covered products or covered equipment to which a particular unit belongs. The manufacturer's model number typically appears on the product nameplates, in product catalogs and in other product advertising literature.

§ 429.4 Materials incorporated by reference.

(a) General. We incorporate by reference the following standards into Part 429. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards/.* Standards can be obtained from the sources below.

(b) *AHAM.* Association of Home Appliance Manufacturers, 1111 19th Street, NW., Suite 402, Washington, DC 20036, 202–872–5955, or go to *http://www.aham.org.*

(1) ANSI/AHAM DW–1–1992, American National Standard, Household Electric Dishwashers, approved February 6, 1992, IBR approved for § 429.19.

(2) [Reserved]

(c) *ISO.* International Organization for Standardization, ch. de la Voie-Creuse CP 56 CH–1211 Geneva 20 Switzerland, telephone +41 22 749 01 11, or go to *http://www.iso.org/iso.*

(1) International Organization for Standardization (ISO)/International Electrotechnical Commission, ("ISO/IEC 17025:2005(E)"), "General requirements for the competence of testing and calibration laboratories", Second edition, May 15, 2005, IBR approved for § 429.110.

(2) [Reserved]

§ 429.5 Imported products.

(a) Any person importing any covered product or covered equipment into the United States shall comply with the provisions of this part, and parts 430 and 431, and is subject to the remedies of this part.

(b) Any covered product or covered equipment offered for importation in violation of this part, or part 430 or 431, shall be refused admission into the customs territory of the United States under rules issued by the U.S. Customs and Border Protection (CBP) and subject to further remedies as provided by law, except that CBP may, by such rules, authorize the importation of such covered product or covered equipment upon such terms and conditions (including the furnishing of a bond) as may appear to CBP appropriate to ensure that such covered product or covered equipment will not violate this part, or part 430 or 431, or will be exported or abandoned to the United States.

§ 429.6 Exported products.

This part, and parts 430 and 431, shall not apply to any covered product or covered equipment if:

(a) Such covered product or covered equipment is manufactured, sold, or held for sale for export from the United States or is imported for export;

(b) Such covered product or covered equipment or any container in which it is enclosed, when distributed in commerce, bears a stamp or label stating "NOT FOR SALE FOR USE IN THE UNITED STATES"; and

(c) Such product is, in fact, not distributed in commerce for use in the United States.

§ 429.7 Confidentiality.

(a) The following records are not exempt from public disclosure: The brand name, and applicable model number(s), and the energy or water rating submitted by manufacturers to DOE pursuant to § 429.19(b)(13).

(b) Pursuant to the provisions of 10 CFR 1004.11(e), any person submitting

information or data which the person believes to be confidential and exempt by law from public disclosure should—at the time of submission—submit:

(1) One complete copy, and one copy from which the information believed to be confidential has been deleted.

(2) A request for confidentiality containing the submitter's views on the reasons for withholding the information from disclosure, including:

(i) A description of the items sought to be withheld from public disclosure,

(ii) Whether and why such items are customarily treated as confidential within the industry,

(iii) Whether the information is generally known by or available from other sources,

(iv) Whether the information has previously been made available to others without obligation concerning its confidentiality,

(v) An explanation of the competitive injury to the submitting person which would result from public disclosure,

(vi) A date upon which such information might lose its confidential nature due to the passage of time, and

(vii) Why disclosure of the information would be contrary to the public interest.

(c) In accordance with the procedures established in 10 CFR 1004.11(e), DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

§ 429.8 Subpoena.

For purposes of carrying out parts 429, 430, and 431, the General Counsel (or delegee), may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served, upon any persons subject to parts 429, 430, or 431, the General Counsel (or delegee) may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as contempt thereof.

Subpart B—Certification

§ 429.10 Purpose and scope.

This subpart sets forth the procedures for manufacturers to certify that their covered products and covered equipment comply with the applicable energy conservation standards.

§ 429.11 General sampling requirements for selecting units to be tested.

(a) When testing of covered products or covered equipment is required to comply with section 323(c) of the Act, or to comply with rules prescribed under sections 324, 325, or 342, 344, 345 or 346 of the Act, a sample comprised of production units (or units representative of production units) of the basic model being tested shall be selected at random and tested, and shall meet the criteria found in §§ 429.14 through 429.54 of this subpart. Components of similar design may be substituted without additional testing if the substitution does not affect energy or water consumption. Any represented values of measures of energy efficiency, water efficiency, energy consumption, or water consumption for all individual models represented by a given basic model must be the same.

(b) Unless otherwise specified, the minimum number of units tested shall be no less than two (except where a different minimum limit is specified in §§ 429.14 through 429.54 of this subpart); and

§ 429.12 General requirements applicable to certification reports.

(a) *Certification.* Each manufacturer, before distributing in commerce any basic model of a covered product or covered equipment subject to an applicable energy conservation standard set forth in parts 430 or 431, and annually thereafter on or before the dates provided in paragraph (e) of this section, shall submit a certification report to DOE certifying that each basic model meets the applicable energy conservation standard(s). The certification report(s) must be submitted to DOE in accordance with the submission procedures of paragraph (i) of this section.

(b) *Certification report.* A certification report shall include a compliance statement (*see* paragraph (c) of this section), and for each basic model, the information listed in this paragraph (b):

(1) Product or equipment type;

(2) Product or equipment class (as denoted in the provisions of part 430 or 431 containing the applicable energy conservation standard);

(3) Manufacturer's name and address;

(4) Private labeler's name(s) and address (if applicable);

(5) Brand name, if applicable;

(6) For each brand, the basic model number and the individual manufacturer's model numbers covered by that basic model with the following exceptions: For external power supplies that certify based on design families, the design family model number and the individual manufacturer's model numbers covered by that design family must be submitted for each brand. For walk-in coolers, the basic model number for each brand must be submitted. For distribution transformers, the basic model number or kVA grouping model number (depending on the certification method) for each brand must be submitted;

(7) Whether the submission is for a new model, a discontinued model, a correction to a previously submitted model, data on a carryover model, or a model that has been found in violation of a voluntary industry certification program;

(8) The test sample size (*i.e.,* number of units tested for each basic model);

(9) Certifying party's U.S. Customs and Border Protection (CBP) importer identification numbers assigned by CBP pursuant to 19 CFR 24.5, if applicable;

(10) Whether certification is based upon any waiver of test procedure requirements under § 430.27 or § 431.401 and the date of such waivers;

(11) Whether certification is based upon any exception relief from an applicable energy conservation standard and the date such relief was issued by DOE's Office of Hearing and Appeals;

(12) Whether certification is based upon the use of an alternate way of determining measures of energy conservation (*e.g.,* an ARM or AEDM), or other method of testing, for determining measures of energy conservation and the approval date, if applicable, of any such alternate rating, testing, or efficiency determination method; and

(13) Product specific information listed in §§ 429.14 through 429.54 of this part.

(c) *Compliance statement.* The compliance statement required by paragraph (b) of this section shall include the date, the name of the company official signing the statement, and his or her signature, title, address, telephone number, and facsimile number and shall certify that:

(1) The basic model(s) complies with the applicable energy conservation standard(s);

(2) All required testing has been conducted in conformance with the applicable test requirements prescribed in parts 429, 430 and 431, as appropriate, or in accordance with the terms of an applicable test procedure waiver;

(3) All information reported in the certification report is true, accurate, and complete; and

(4) The manufacturer is aware of the penalties associated with violations of the Act, the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(d) *Annual filing.* All data required by paragraphs (a) through (c) shall be submitted to DOE annually, on or before the following dates:

Product category	Deadline for data submission
Fluorescent lamp ballasts, Medium base compact fluorescent lamps, Incandescent reflector lamps, General service fluorescent lamps, General service incandescent lamps, Intermediate base incandescent lamps, Candelabra base incandescent lamps, Residential ceiling fans, Residential ceiling fan light kits, Residential showerheads, Residential faucets, Residential water closets, and Residential urinals.	Mar. 1.
Residential water heater, Residential furnaces, Residential boilers, Residential pool heaters, Commercial water heaters, Commercial hot water supply boilers, Commercial unfired hot water storage tanks, Commercial packaged boilers, Commercial warm air furnaces, and Commercial unit heaters.	May 1
Residential dishwashers, Commercial prerinse spray valves, Illuminated exit signs, Traffic signal modules, Pedestrian modules, and Distribution transformers.	June 1.
Room air conditioners, Residential central air conditioners, Residential central heat pumps, Small duct high velocity system, Space constrained products, Commercial package air-conditioning and heating equipment, Packaged terminal air conditioners, Packaged terminal heat pumps, and Single package vertical units.	July 1.
Residential refrigerators, Residential refrigerators-freezers, Residential freezers, Commercial refrigerator, freezer, and refrigerator-freezer, Automatic commercial automatic ice makers, Refrigerated bottled or canned beverage vending machine, Walk-in coolers, and Walk-in freezers.	Aug. 1.
Torchieres, Residential dehumidifiers, Metal halide lamp fixtures, and External power supplies	Sept. 1.
Residential clothes washers, Residential clothes dryers, Residential direct heating equipment, Residential cooking products, and Commercial clothes washers.	Oct. 1.

(e) *New model filing.* (1) In addition to the annual filing schedule in paragraph (d) of this section, any new basic models must be certified pursuant to paragraph (a) of this section before distribution in commerce. A modification to a model that increases the model's energy or water consumption or decreases its efficiency resulting in re-rating must be certified as a new basic model pursuant to paragraph (a) of this section.

(2) For general service fluorescent lamps or incandescent reflector lamps: Prior to or concurrent with the distribution of a new basic model each manufacturer shall submit an initial certification report listing the basic model number, lamp wattage, and date of first manufacture (*i.e.,* production date) for that basic model. The certification report must also state how the manufacturer determined that the lamp meets or exceeds the energy conservation standards, including a description of any testing or analysis the manufacturer performed. Manufacturers of general service fluorescent lamps and incandescent reflector lamps shall submit the certification report required by paragraph (b) of this section within one year after the first date of new model manufacture.

(3) For distribution transformers, the manufacturer shall submit all information required in paragraphs (b) and (c) of this section for the new basic model, unless the manufacturer has previously submitted to the Department a certification report for a basic model of distribution transformer that is in the same kVA grouping as the new basic model.

(f) *Discontinued model filing.* When production of a basic model has ceased and it is no longer being sold or offered for sale by the manufacturer or private labeler, the manufacturer shall report this discontinued status to DOE as part of the next annual certification report following such cessation. For each basic model, the report shall include the information specified in paragraphs (b)(1) through (b)(7) of this section.

(g) *Third party submitters.* A manufacturer may elect to use a third party to submit the certification report to DOE (for example, a trade association, independent test lab, or other authorized representative, including a private labeler acting as a third party submitter on behalf of a manufacturer); however, the manufacturer is responsible for submission of the certification report to DOE. DOE may refuse to accept certification reports from third party submitters who have failed to submit reports in accordance with the rules of this part. The third party submitter must complete the compliance statement as part of the certification report. Each manufacturer using a third party submitter must have an authorization form on file with DOE. The authorization form includes a compliance statement, specifies the third party authorized to submit certification reports on the manufacturer's behalf and provides the contact information and signature of a company official.

(h) *Method of submission.* Reports required by this section must be submitted to DOE electronically at *http://www.regulations.doe.gov/ccms* (CCMS). A manufacturer or third party submitter can find product-specific templates for each covered product or covered equipment with certification requirements online at *https://www.regulations.doe.gov/ccms/templates.html.* Manufacturers and third party submitters must submit a registration form, signed by an officer of the company, in order to obtain access to CCMS.

§ 429.13 Testing requirements.

(a) The determination that a basic model complies with an applicable energy conservation standard shall be determined from the values derived pursuant to the applicable testing and sampling requirements set forth in parts 429, 430 and 431. The determination that a basic model complies with the applicable design standard shall be based upon the incorporation of specific design requirements in parts 430 and 431 or as specified in section 325 and 342 of the Act.

(b) Where DOE has determined a particular entity is in noncompliance with an applicable standard or certification requirement, DOE may impose additional testing requirements as a remedial measure.

§ 429.14 Residential refrigerators, refrigerator-freezers and freezers.

(a) *Sampling plan for selection of units for testing.*

(1) The requirements of § 429.11 are applicable to residential refrigerators, refrigerator-freezers and freezers; and

(2) For each basic model of residential refrigerators, refrigerator-freezers, and freezers, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of estimated annual operating cost, energy consumption, or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.*

(1) The requirements of § 429.12 are applicable to residential refrigerators, refrigerator-freezers and freezers; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The annual energy use in kilowatt hours per year (kWh/yr), total adjusted volume in cubic feet (cu ft), and measured height of the unit.

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific

information: whether the basic model has variable defrost control (in which case, manufacturers must also report the values, if any, of CT_L and CT_M (For an example, *see* section 5.2.1.3 in Appendix A to Subpart B of Part 430) used in the calculation of energy consumption), whether the basic model has variable anti-sweat heater control (in which case, manufacturers must also report the values of heater Watts at the ten humidity levels 5%, 15%, through 95% used to calculate the variable anti-sweat heater "Correction Factor"), and whether testing has been conducted with modifications to the standard temperature sensor locations specified by the figures referenced in section 5.1 of Appendices A1, B1, A, and B to Subpart B of Part 430.

§ 429.15 Room air conditioners.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to room air conditioners; and

(2) For each basic model of room air conditioners, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

or,

(B) The upper 97½; percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy efficiency ratio or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

or,

(B) The lower 97½; percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to room air conditioners; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/W-h)), cooling capacity in British thermal units per hour (Btu/h), and the electrical power input in watts (W).

§ 429.16 Central air conditioners and heat pumps.

(a) *Sampling plan for selection of units for testing.* (1) The general requirements of § 429.11 are applicable to central air conditioners and heat pumps; and

(2)(i) For central air conditioners and heat pumps, each single-package system and each condensing unit (outdoor unit) of a split-system, when combined with a selected evaporator coil (indoor unit) or a set of selected indoor units, must have a sample of sufficient size tested in accordance with the applicable provisions of this subpart. The represented values for any model of a single-package system, any model of a tested split-system combination, any model of a tested mini-split system combination, or any model of a tested multi-split system combination must be assigned such that—

(A) Any represented value of annual operating cost, energy consumption or other measure of energy consumption of the central air conditioner or heat pump for which consumers would favor lower values shall be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The upper 90 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(B) Any represented value of the energy efficiency or other measure of energy consumption of the central air conditioner or heat pump for which consumers would favor higher values shall be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The lower 90 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(C) For heat pumps, all units of the sample population must be tested in both the cooling and heating modes and the results used for determining the heat pump's certified Seasonal Energy Efficiency Ratio (SEER) and Heating Seasonal Performance Factor (HSPF) ratings in accordance with paragraph (a)(2)(i)(B) of this section.

(ii) For split-system air conditioners and heat pumps, the condenser-evaporator coil combination selected for tests pursuant to paragraph (a)(2)(i) of this section shall include the evaporator coil that is likely to have the largest volume of retail sales with the particular model of condensing unit. For mini-split condensing units that are designed to always be installed with more than one indoor unit, a "tested combination" as defined in 10 CFR 430.2 shall be used for tests pursuant to paragraph (a)(2)(i) of this section. For multi-split systems, each model of condensing unit shall be tested with two different sets of indoor units. For one set, a "tested combination" composed entirely of non-ducted indoor units shall be used. For the second set, a "tested combination" composed entirely of ducted indoor units shall be used. However, for any split-system air conditioner having a single-speed compressor, the condenser-evaporator coil combination selected for tests pursuant to paragraph (a)(2)(i) of this section shall include the indoor *coil-only* unit that is likely to have the largest volume of retail sales with the particular model of outdoor unit. This *coil-only* requirement does not apply to split-system air conditioners that are only sold and installed with *blower-coil* indoor units, specifically mini-splits, multi-splits, and through-the-wall units. This *coil-only* requirement does not apply to any split-system heat pumps. For every other split-system combination that includes the same model of condensing unit but a different model of evaporator coil and for every other mini-split and multi-split system that includes the same model of condensing unit but a different set of evaporator coils, whether the evaporator coil(s) is manufactured by the same manufacturer or by a component manufacturer, either—

(A) A sample of sufficient size, comprised of production units or representing production units, must be tested as complete systems with the resulting ratings for the outdoor unit-indoor unit(s) combination obtained in accordance with paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section; or

(B) The representative values of the measures of energy efficiency must be assigned as follows:

(*1*) Using an alternative rating method (ARM) that has been approved by DOE in accordance with the provisions of § 429.70(e)(1) and (2); or

(*2*) For multi-split systems composed entirely of non-ducted indoor units, set equal to the system tested in accordance with paragraph (a)(2)(i) of this section whose tested combination was entirely non-ducted indoor units; or

(*3*) For multi-split systems composed entirely of ducted indoor units, set equal to the system tested in accordance with paragraph (a)(2)(i) of this section when the tested combination was entirely ducted indoor units; or

(*4*) For multi-split systems having a mix of non-ducted and ducted indoor units, set equal to the mean of the values for the two systems—one having the tested combination of all non-ducted units and the second having the tested combination of all ducted indoor units—tested in accordance with paragraph (a)(2)(i) of this section.

(iii) Whenever the representative values of the measures of energy consumption, as determined by the provisions of paragraph (a)(2)(ii)(B) of this section, do not agree within 5 percent of the energy consumption as determined by actual testing, the values determined by actual testing must be used to comply with section 323(c) of the Act or to comply with rules under section 324 of the Act.

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to central air conditioners and heat pumps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) Residential central air conditioners: The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/W-h)), the cooling capacity in British thermal units per hour (Btu/h), and the manufacturer and individual manufacturer's model numbers of the indoor and outdoor unit. For central air conditioners whose seasonal energy efficiency ratio is based on an installation that includes a particular model of ducted air mover (*e.g.,* furnace, air handler, blower kit), the manufacturer's model number of this ducted air mover must be included among the model numbers listed on the certification report.

(ii) Residential central air conditioning heat pumps: The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/W-h)), the cooling capacity in British thermal units per hour (Btu/h), the heating seasonal performance factor (HSPF in British thermal units per Watt-hour (Btu/W-h)), and the manufacturer and individual model numbers of the indoor and outdoor unit. For central air conditioning heat pumps whose seasonal energy efficiency ratio and heating seasonal performance factor are based on an installation that includes a particular model of ducted air mover (*e.g.,* furnace, air handler, blower kit), the model number of this ducted air mover must be included among the model numbers listed on the certification report.

(iii) Small duct, high velocity air conditioners: The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/W-h)) and the cooling capacity in British thermal units per hour (Btu/h).

(iv) Small duct, high velocity heat pumps: The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/W-h)), the heating seasonal performance factor (HSPF in British thermal units per Watt-hour (Btu/W-h)), and the cooling capacity in British thermal units per hour (Btu/h).

(iv) Space constrained air conditioners: The seasonal energy

efficiency ratio (SEER in British thermal units per Watt-hour (Btu/W-h)) and the cooling capacity in British thermal units per hour (Btu/h).

(v) Space constrained heat pumps: The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/W-h)), the coefficient of performance, and the cooling capacity in British thermal units per hour (Btu/h).

(c) *Alternative methods for determining efficiency or energy use* for central air conditioners and heat pumps can be found in § 429.70 of this subpart.

§ 429.17 Residential water heaters.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to residential water heaters; and

(2) For each basic model of residential water heaters, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to residential water heaters; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The energy factor (EF), rated storage volume in gallons (gal), first hour rating (maximum gallons per minute), and recovery efficiency (percent).

§ 429.18 Residential furnaces.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to residential furnaces; and

(2) (i) For each basic model of furnaces, other than basic models of those sectional cast-iron boilers (which may be aggregated into groups having identical intermediate sections and combustion chambers) a sample of sufficient size shall be randomly selected and tested to ensure that—

(A) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

and

(B) Any represented value of the annual fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(ii) For the lowest capacity basic model of a group of basic models of those sectional cast-iron boilers having identical intermediate sections and combustion chambers, a sample of sufficient size shall be randomly selected and tested to ensure that—

(A) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(B) Any represented value of the fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(iii) For the highest capacity basic model of a group of basic models of those sectional cast-iron boilers having identical intermediate sections and combustion chambers, a sample of sufficient size shall be randomly selected and tested to ensure that—

(A) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(B) Any represented value of the fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(iv) For each basic model or capacity other than the highest or lowest of the group of basic models of sectional cast-iron boilers having identical intermediate sections and combustion chambers, represented values of measures of energy consumption shall be determined by either—

(A) A linear interpolation of data obtained for the smallest and largest capacity units of the family, or

(B) Testing a sample of sufficient size to ensure that:

(*1*) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*i*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*ii*) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(*2*) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*i*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*ii*) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(v) Whenever measures of energy consumption determined by linear interpolation do not agree with measures of energy consumption determined by actual testing, the values determined by testing must be used for certification.

(vi) In calculating the measures of energy consumption for each unit tested, use the design heating requirement corresponding to the mean

of the capacities of the units of the sample.

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to residential furnaces; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) Residential furnaces and boilers: The annual fuel utilization efficiency (AFUE) in percent (%) and the input capacity in British thermal units per hour (Btu/h).

(ii) For cast-iron sectional boilers: The type of ignition system for gas-fired steam and hot water boilers no later than September 1, 2012.

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information: For cast-iron sectional boilers: a declaration of whether certification is based on linear interpolation or testing. For hot water boilers, a declaration that the manufacturer has incorporated the applicable design requirements no later than September 1, 2012.

§ 429.19 Dishwashers.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to dishwashers; and

(2) For each basic model of dishwashers, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of estimated annual operating cost, energy or water consumption or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy or water factor or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to dishwashers; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The annual energy use in kilowatt hours per year (kWh/yr) and the water factor in gallons per cycle.

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information: the capacity in number of place settings as specified in ANSI/AHAM DW–1 (incorporated by reference, *see* § 429.4), presence of a soil sensor (if yes, the number of cycles required to reach calibration), and the water inlet temperature used for testing in degrees Fahrenheit (°F).

§ 429.20 Residential clothes washers.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to residential clothes washers; and

(2) For each basic model of residential clothes washers, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of the water factor, the estimated annual operating cost, the energy or water consumption, or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the modified energy factor or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to residential clothes washers; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The modified energy factor (MEF) in cubic feet per kilowatt hour per cycle (cu ft/kWh/cycle) and the capacity in cubic feet (cu ft). For standard-size residential clothes washers, a water factor (WF) in gallons per cycle per cubic feet (gal/cycle/cu ft).

§ 429.21 Residential clothes dryers.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to clothes dryers; and

(2) For each basic model of clothes dryers a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to clothes dryers; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The energy factor in pounds per kilowatt hours (lb/kWh), the capacity in cubic feet (cu ft), and the voltage in volts (V) (for electric dryers only).

§ 429.22 Direct heating equipment.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to direct heating equipment; and

(2) (i) For each basic model of direct heating equipment (not including furnaces) a sample of sufficient size shall be randomly selected and tested to ensure that—

(A) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(B) Any represented value of the fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(ii) In calculating the measures of energy consumption for each unit tested, use the design heating requirement corresponding to the mean of the capacities of the units of the sample.

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to direct heating equipment; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: Direct heating equipment, the annual fuel utilization efficiency (AFUE) in percent (%), the mean input capacity in British thermal units per hour (Btu/h), and the mean output capacity in British thermal units per hour (Btu/h). Note, vented hearth heaters as defined in § 430.2 must report no later than April 16, 2013.

§ 429.23 Conventional cooking tops, conventional ovens, microwave ovens.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to conventional cooking tops, conventional ovens and microwave ovens; and

(2) For each basic model of conventional cooking tops, conventional ovens and microwave ovens a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to conventional cooking tops, conventional ovens and microwave ovens; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The type of pilot light and a declaration that the manufacturer has incorporated the applicable design requirements.

§ 429.24 Pool heaters.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to pool heaters; and

(2) For each basic model of pool heater a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of the thermal efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(ii) The lower 97½ percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to pool heaters; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The thermal efficiency in percent (%) and the input capacity in British thermal units per hour (Btu/h).

§ 429.25 Television sets. [Reserved]

§ 429.26 Fluorescent lamp ballasts.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to fluorescent lamp ballasts; and

(2) For each basic model of fluorescent lamp ballasts, a sample of sufficient size, not less than four, shall be randomly selected and tested to ensure that—

(i) Any represented value of estimated annual energy operating costs, energy consumption, or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 99 percent confidence limit (UCL) of the true mean divided by 1.01, where:

$$UCL = \bar{x} + t_{.99}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the ballast efficacy factor or other measure of the energy consumption of a basic model for which consumers would favor a higher value shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 99 percent confidence limit (LCL) of the true mean divided by 0.99, where

$$LCL = \bar{x} - t_{.99}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to fluorescent lamp ballasts; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The ballast efficacy factor, the ballast power factor, the number of lamps operated by the ballast, and the type of lamps operated by the ballast.

§ 429.27 General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to general service fluorescent lamps, general service incandescent lamps and incandescent reflector lamps; and

(2)(i) For each basic model of general service fluorescent lamp, general service incandescent lamp, and incandescent reflector lamp, samples of production lamps shall be obtained from a 12-month period, tested, and the results averaged. A minimum sample of 21 lamps shall be tested. The manufacturer shall randomly select a minimum of three lamps from each month of production for a minimum of 7 out of the 12-month period. In the instance where production occurs during fewer than 7 of such 12 months, the manufacturer shall randomly select 3 or more lamps from each month of production, where the number of lamps

selected for each month shall be distributed as evenly as practicable among the months of production to attain a minimum sample of 21 lamps. Any represented value of lamp efficacy of a basic model shall be based on the sample and shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by .97, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(ii) For each basic model of general service fluorescent lamp, the color rendering index (CRI) shall be measured from the same lamps selected for the lumen output and watts input measurements in paragraph (a)(2)(i) of this section, *i.e.,* the manufacturer shall measure all lamps for lumens, watts input, and CRI. The CRI shall be represented as the average of a minimum sample of 21 lamps and shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by .97, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to general service fluorescent lamps, general service incandescent lamps and incandescent reflector lamps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) General service fluorescent lamps: the testing laboratory's National Voluntary Laboratory Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production dates of the units tested, the 12-month average lamp efficacy in lumens per watt (lm/W),

lamp wattage (W), correlated color temperature in Kelvin (K), and the 12-month average Color Rendering Index (CRI).

(ii) Incandescent reflector lamps: The laboratory's NVLAP identification number or other NVLAP-approved accreditation identification, production dates of the units tested, the 12-month average lamp efficacy in lumens per watt (lm/W), and lamp wattage (W).

(iii) General service incandescent lamps: On or after the effective dates specified in § 430.32, the testing laboratory's National Voluntary Laboratory Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production dates of the units tested, the 12-month average maximum rate wattage in watts (W), the 12-month average minimum rated lifetime (hours), and the 12-month average Color Rendering Index (CRI).

(c) *Test data.* Manufacturers must include the production date codes and the accompanying decoding scheme corresponding to all of the units tested for a given basic model in the detailed test records maintained under § 429.71.

§ 429.28 Faucets.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to faucets; and

(2) For each basic model of faucet, a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of the higher of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(ii) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to faucets; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum water use in gallons per minute (gpm) or, in the case of metering faucets, gallons per cycle (gal/cycle) for each faucet and the flow water pressure in pounds per square inch (psi).

§ 429.29 Showerheads.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to showerheads; and

(2) For each basic model of a showerhead, a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be greater than or equal to the higher of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(ii) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to showerheads; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum water use in gallons per minute (gpm) and the maximum flow water pressure in pounds per square inch (psi).

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information: A declaration that the showerhead meets the requirements of ASME/ANSI A112.18.1M:1996.

§ 429.30 Water closets.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to water closets; and

(2) For each basic model of water closet, a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be greater than or equal to the higher of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(ii) The upper 90 percent confidence limit (UCL) of the true mean divided by 1.1, where:

$$UCL = \bar{x} + t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to water closets; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum water use in gallons per flush (gpf).

§ 429.31 Urinals.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to urinals; and

(2) For each basic model of urinal, a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be greater than or equal to the higher of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(ii) The upper 90 percent confidence limit (UCL) of the true mean divided by 1.1, where:

$$UCL = \bar{x} + t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to urinals; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum water use in gallons per flush and for trough-type urinals, the maximum flow rate in gallons per minute (gpm) and the length of the trough in inches (in).

§ 429.32 Ceiling fans.

(a) *Sampling plan for selection of units for testing.* The requirements of § 429.11 are applicable to ceiling fans.

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to ceiling fans; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The number of speeds within the ceiling fan controls and a declaration that the manufacturer has incorporated the applicable design requirements.

§ 429.33 Ceiling fan light kits.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to ceiling fan light kits; and

(2) For each basic model of ceiling fan light kit with sockets for medium screw base lamps or pin-based fluorescent lamps selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.1, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the efficacy or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.9, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to ceiling fan light kits; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) Ceiling fan light kits with sockets for medium screw base lamps: the rated wattage in watts (W) and the system's efficacy in lumens per watt (lm/W).

(ii) Ceiling fan light kits with pin-based sockets for fluorescent lamps: the rated wattage in watts (W), the system's efficacy in lumens per watt (lm/W), and the length of the lamp in inches (in).

(iii) Ceiling fan light kits with any other socket type: the rated wattage in watts (W) and the number of individual sockets.

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information: Ceiling fan light kits with any other socket type: a declaration that the basic model meets the applicable design requirement and the features that have been incorporated into the ceiling fan light kit to meet the applicable design requirement (*e.g.,* circuit breaker, fuse, ballast).

§ 429.34 Torchieres.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to torchieres; and

(2) Reserved

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to torchieres; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information: A declaration that the basic model meets the applicable design requirement and the features that have been incorporated into the torchiere to meet the applicable design requirement (*e.g.,* circuit breaker, fuse, ballast).

§ 429.35 Bare or covered (no reflector) medium base compact fluorescent lamps.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to bare or covered (no reflector) medium base compact fluorescent lamps; and

(2) For each basic model of bare or covered (no reflector) medium base compact fluorescent lamp

(i) No less than five units per basic model must be used when testing for the efficacy, 1,000-hour lumen maintenance, and the lumen maintenance. Each unit must be tested in the base-up position unless the product is labeled restricted by the manufacturer, in which case the unit should be tested in the manufacturer specified position. Any represented value of efficacy, 1,000-hour lumen maintenance, and lumen maintenance shall be based on a sample randomly selected and tested to ensure that the represented value is less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 97.5 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(ii) No less than 6 unique units (*i.e.,* units that have not previously been tested) per basic model must be used when testing for the rapid cycle stress. Each unit can be tested in the base up or base down position as stated by the manufacturer.

(iii) No less than 10 units per basic model must be used when testing for the average rated lamp life. Half the sample should be tested in the base up position and half of the sample should be tested in the base down position, unless specific use or position appears on the packaging of that particular unit.

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to bare of covered medium base compact fluorescent lamps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The testing laboratory's NVLAP identification number or other NVLAP-approved accreditation identification, production dates for the units tested, the minimum initial efficacy in lumens per watt (lm/W), the lumen maintenance at 1,000 hours in percent (%), the lumen maintenance at 40 percent of rated life in percent (%), the rapid cycle stress test in number of units passed, and the lamp life in hours (h).

(c) *Test data.* Manufacturers must include the production date codes and the accompanying decoding scheme corresponding to all of the units tested for a given basic model in the detailed test records maintained under § 429.71.

§ 429.36 Dehumidifiers.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to dehumidifiers; and

(2) For each basic model of dehumidifier selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to dehumidifiers; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The energy factor in liters per kilowatt hour (liters/kWh) and capacity in pints per day.

§ 429.37 Class A external power supplies.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to external power supplies; and

(2) For each basic model of external power supply selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of the estimated energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 97.5 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the estimated energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 97.5 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to external power supplies except that required information may be reported on the basis of a basic model or a design family. If certifying using a design family, for § 429.12(b)(6), report the individual manufacturer's model numbers covered by the design family.

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) External power supplies: The average active mode efficiency as a percent (%), no-load mode power consumption in watts (W), nameplate output power in watts (W), and, if missing from the nameplate, the output current in amperes (A) of the basic model or the output current in amperes (A) of the highest- and lowest-voltage models within the external power supply design family.

(ii) Switch-selectable single-voltage external power supplies: The average active mode efficiency as a percent (%), no-load mode power consumption in watts (W) at the lowest and highest selectable output voltage, nameplate output power in watts (W), and, if missing from the nameplate, the output current in amperes (A).

§ 429.38 Non-class A external power supplies. [Reserved]

§ 429.39 Battery chargers.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to battery chargers; and

(2) For each basic model of battery charger selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of the estimated non-active energy ratio or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 97.5 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the estimated non-active energy ratio or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 97.5 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D of this part).

(b) *Certification reports.* [Reserved]

§ 429.40 Candelabra base incandescent lamps and intermediate base incandescent lamps.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to candelabra base incandescent lamps; and

(2) For each basic model of candelabra base incandescent lamp and intermediate base incandescent lamp, a minimum sample of 21 lamps shall be randomly selected and tested. Any represented value of lamp wattage of a basic model shall be based on the sample and shall be less than or equal to the lower of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(ii) The lower 97.5 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D of this part).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to candelabra base and intermediate base incandescent lamps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) Candelabra base incandescent lamp: The rated wattage in watts (W).

(ii) Intermediate base incandescent lamp: The rated wattage in watts (W).

§ 429.41 Electric motors. [Reserved]

§ 429.42 Commercial refrigerators, freezers, and refrigerator-freezers.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to commercial refrigerators, freezers, and refrigerator-freezers; and

(2) For each basic model of commercial refrigerator, freezer, or refrigerator-freezer selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any value of estimated maximum daily energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the maximum of the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to commercial refrigerators, freezers, and refrigerator-freezers; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) Self-contained commercial refrigerators with solid doors, commercial refrigerators with transparent doors, commercial freezers with solid doors, and commercial freezers with transparent doors: the maximum daily energy consumption in kilowatt hours per day (kWh/day) and the chilled or frozen compartment volume in cubic feet (ft^3).

(ii) Self-contained commercial refrigerator-freezers with solids doors: the maximum average daily energy consumption in kilowatt hours per day (kWh/day) and the adjusted volume in cubic feet (ft^3).

(iii) Remote condensing commercial refrigerators, freezers, and refrigerator-freezers, self-contained commercial refrigerators, freezers, and refrigerator-freezers without doors, commercial ice-cream freezers, and commercial refrigeration equipment with two or more compartments (*i.e.,* hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers): On or after January 1, 2012, the maximum daily energy consumption in kilowatt hours per day (kWh/day), the total display area (TDA) in feet squared (ft^2) or the chilled volume in cubic feet (ft^3) as necessary to demonstrate compliance with the standards set forth in § 431.66, the rating temperature in degrees Fahrenheit (°F), the operating temperature range in degrees Fahrenheit (*e.g.,* ≥32°F, <32°F, and ≤ − 5°F), the equipment family designation as described in § 431.66, and the condensing unit configuration.

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to commercial HVAC equipment; and

(2) For each basic model of commercial heating, ventilating, air conditioning (HVAC) equipment, efficiency must be determined either by testing, in accordance with applicable test procedures in §§ 431.76, 431.86, 431.96, or 431.106 and the provisions of this section, or by application of an alternative efficiency determination method (AEDM) that meets the requirements of § 429.48 and the provisions of this section. For each basic model of commercial HVAC equipment, a sample of sufficient size shall be selected and tested to ensure that—

(i) Any represented value of energy consumption or other measure of energy usage of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to commercial HVAC equipment; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) Commercial warm air furnaces: The thermal efficiency in percent (%) and the maximum rated input capacity in British thermal units per hour (Btu/h).

(ii) Commercial packaged boilers: The combustion efficiency in percent (%) and the maximum rated input capacity in British thermal unit per hour (Btu/h) for equipment manufactured before March 2, 2012. For equipment manufactured on or after March 2, 2012, either the combustion efficiency in percent (%), or the thermal efficiency in percent (%) as required in § 431.87 and the maximum rated input capacity in British thermal units per hour (Btu/h).

(iii) Commercial package air-conditioning and heating equipment (except small commercial package air conditioning and heating equipment that is air-cooled with a cooling capacity less than 65,000 Btu/h): the energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/Wh)), the coefficient of performance (COP) as necessary to meet the standards set forth in § 431.97, the cooling capacity in British thermal unit per hour (Btu/h), and the type of heating used by the unit.

(iv) Small commercial package air conditioning and heating equipment that is air-cooled with a cooling capacity less than 65,000 Btu/h: The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/Wh)), the heating seasonal performance factor (HSPF in British thermal units per Watt-hour(Btu/Wh)) as necessary to meet the standards set forth in § 431.97, and the cooling capacity in British thermal units per hour (Btu/h).

(v) Package terminal air conditioners: The energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/Wh)), the cooling capacity in British thermal units per hour (Btu/h), and the wall sleeve dimensions in inches (in).

(vi) Package terminal heat pumps: The energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/W-h)), the coefficient of performance (COP), the cooling capacity in British thermal units per hour (Btu/h), and the wall sleeve dimensions in inches (in).

(vii) Single package vertical air conditioner: The energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/Wh)) and the cooling capacity in British thermal units per hour (Btu/h).

(viii) Single package vertical heat pumps: The energy efficiency ratio (EER in British thermal units per Watt-hour

(Btu/Wh)), the coefficient of performance (COP), and the cooling capacity in British thermal units per hour (Btu/h).

(c) Alternative methods for determining efficiency or energy use for commercial HVAC equipment can be found in § 429.70 of this subpart.

§ 429.44 Commercial water heating equipment.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to commercial WH equipment; and

(2) For each basic model of commercial water heating (WH) equipment, efficiency must be determined either by testing, in accordance with applicable test procedures in §§ 431.76, 431.86, 431.96, or 431.106 and the provisions of this section, or by application of an alternative efficiency determination method (AEDM) that meets the requirements of § 429.48 and the provisions of this section. For each basic model of commercial WH equipment, a sample of sufficient size shall be selected and tested to ensure that—

(i) Any represented value of maximum standby loss or other measure of energy usage of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the maximum of the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of minimum thermal efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the minimum of the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to commercial WH equipment; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) Commercial electric storage water heaters: The maximum standby loss in percent per hour (%/hr), and the measured storage volume in gallons (gal).

(ii) Commercial gas-fired and oil-fired storage water heaters: The minimum thermal efficiency in percent (%), the maximum standby loss in British thermal units per hour (Btu/h), the rated storage volume in gallons (gal), the measured storage volume in gallons (gal) and the nameplate input rate in British thermal units per hour (Btu/h).

(iii) Commercial gas-fired and oil-fired instantaneous water heaters greater than or equal to 10 gallons and gas-fired and oil-fired hot water supply boilers greater than or equal to 10 gallons: the minimum thermal efficiency in percent (%), the maximum standby loss in British thermal units per hour (Btu/h), the rated storage volume in gallons (gal), and the nameplate input rate in Btu/h.

(iv) Commercial gas-fired and oil-fired instantaneous water heaters less than 10 gallons and gas-fired and oil-fired hot water supply boilers less than 10 gallons: the minimum thermal efficiency in percent (%) and the storage volume in gallons (g).

(v) Commercial unfired hot water storage tanks: The minimum thermal insulation (*i.e.,* R-value) and the measured storage volume in gallons (gal).

(c) Alternative methods for determining efficiency or energy use for commercial WH equipment can be found in § 429.70 of this subpart.

§ 429.45 Automatic commercial ice makers.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to automatic commercial ice makers; and

(2) For each basic model of automatic commercial ice maker selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of maximum energy use or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to automatic commercial ice makers; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum energy use in kilowatt hours per 100 pounds of ice (kWh/100 lbs ice), the maximum condenser water use in gallons per 100 pounds of ice (gal/100 lbs ice), the harvest rate in pounds of ice per 24 hours (lbs ice/24 hours), the type of cooling, and the equipment type.

§ 429.46 Commercial clothes washers.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to commercial clothes washers; and

(2) For each basic model of commercial clothes washers, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of energy or water consumption or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 97½ percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the modified energy factor, water factor, or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 97½; percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.975}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.975}$ is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to commercial clothes washers; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The modified energy factor (MEF) in cubic feet per kilowatt hour per cycle (cu ft/kWh/cycle) and the water factor in gallons per cubic feet per cycle (gal/cu ft/cycle) for units manufactured on or after January 8, 2013.

§ 429.47 Distribution transformers.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to distribution transformers; and

(2) For each basic model of distribution transformer, efficiency must be determined either by testing, in accordance with § 431.193 and the provisions of this section, or by application of an AEDM that meets the requirements of § 429.70 and the provisions of this section.

(i) For each basic model selected for testing:

(A) If the manufacturer produces five or fewer units of a basic model over 6 months, each unit must be tested. A manufacturer may not use a basic model with a sample size of fewer than five units to substantiate an AEDM pursuant to § 429.70.

(B) If the manufacturer produces more than five units over 6 months, a sample of at least five units must be selected and tested.

(ii) Any represented value of efficiency of a basic model must satisfy the condition:

$$RE \leq \frac{100}{1 + \left(\frac{100 - \bar{x}}{\bar{x}}\right)\left(\frac{\sqrt{n}}{\sqrt{n} + .08}\right)}$$

where $\bar{x}$ is the average efficiency of the sample.

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to distribution transformers except that required information in paragraph (b) of this section may be reported by kVA grouping instead of by basic model and paragraph (b)(6) of this section does not apply; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: For the most and least efficient basic models within each "kVA grouping" for which part 431 prescribes an efficiency standard, the kVA rating, the insulation type (*i.e.,* low-voltage dry-type, medium-voltage dry-type or liquid-immersed), the number of phases (*i.e.,* single-phase or three-phase), and the basic impulse insulation level (BIL) group rating (for medium-voltage dry-types).

(c) *Alternative methods for determining efficiency or energy use* for distribution transformers can be found in § 429.70 of this subpart.

(d) *Kilovolt ampere (kVA) grouping.* As used in this section, a "kVA grouping" is a group of basic models which all have the same kVA rating, have the same insulation type (*i.e.,* low-voltage dry-type, medium-voltage dry-type or liquid-immersed), have the same number of phases (*i.e.,* single-phase or three-phase), and, for medium-voltage dry-types, have the same BIL group rating (*i.e.,* 20–45 kV BIL, 46–95 kV BIL or greater than or equal to96 kV BIL).

§ 429.48 Illuminated exit signs.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to illuminated exit signs; and

(2) For each basic model of illuminated exit sign selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of input power demand or other measure of energy consumption of a basic model for which consumers would favor lower

values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where

Or,

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to illuminated exit signs; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The input power demand in watts (W) and the number of faces.

§ 429.49 Traffic signal modules and pedestrian modules.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to traffic signal modules and pedestrian modules; and

(2) For each basic model of traffic signal module or pedestrian module selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of estimated maximum and nominal wattage or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to traffic signal modules and pedestrian modules; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum wattage at 74 degrees Celsius (°C) in watts (W), the nominal wattage at 25 degrees Celsius (°C) in watts (W), and the signal type.

§ 429.50 Commercial unit heaters.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to commercial unit heaters; and

(2) [Reserved]

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to commercial unit heaters; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The type of ignition system and a declaration that the manufacturer has incorporated the applicable design requirements.

§ 429.51 Commercial pre-rinse spray valves.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to commercial pre-rinse spray valves; and

(2) For each basic model of commercial pre-rinse spray valves selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of water consumption or other measure of water consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the water efficiency or other measure of water consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to commercial pre-rinse spray valves; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The flow rate in gallons per minute (gpm).

§ 429.52 Refrigerated bottled or canned beverage vending machines.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to refrigerated bottled or canned beverage vending machine; and

(2) For each basic model of refrigerated bottled or canned beverage vending machine selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

and

(ii) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to refrigerated bottled or canned beverage vending machine; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: For units manufactured on or after August 31, 2012, the maximum average daily energy consumption in kilowatt hours per day (kWh/day), the refrigerated volume (V) in cubic feet (ft^3) used to demonstrate compliance with standards set forth in § 431.296, the ambient temperature in degrees Fahrenheit (°F), and the ambient relative humidity in percent (%) during the test.

§ 429.53 Walk-in coolers and walk-in freezers.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to walk-in coolers and freezers; and

(2) [Reserved]

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to walk-in coolers and freezers, except that paragraph (b)(6) of this section does not apply; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The door type, the R-value of the wall, ceiling and door insulation (except for glazed portions of the doors or structural members), the R-value of the floor insulation (for freezers only), the evaporator fan motor type, the efficacy of the lighting including ballast losses, and a declaration that the manufacturer has incorporated the applicable design requirements. In addition, for those walk-in coolers and freezers with transparent reach-in doors and windows: the glass type of the doors and windows (*e.g.,* double-pane with heat reflective treatment, triple-pane glass with gas fill), and the power draw of the antisweat heater in watts.

§ 429.54 Metal halide lamp ballasts and fixtures.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to metal halide lamp ballasts; and

(2) For each basic model of metal halide lamp ballast selected for testing, a sample of sufficient size, not less than four, shall be selected at random and tested to ensure that:

(i) Any represented value of estimated energy efficiency calculated as the measured output power to the lamp divided by the measured input power to the ballast (P_{out}/P_{in}), of a basic model is less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(B) The lower 99-percent confidence limit (LCL) of the true mean divided by 0.99.

$$LCL = \bar{x} - t_{.99}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.99}$ is the t statistic for a 99% two-tailed confidence interval with n-1 degrees of freedom (from Appendix D).

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to metal halide lamp ballasts; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The minimum ballast efficiency in percent (%), the lamp wattage in watts (W), and the type of ballast (*e.g.,* pulse-start, magnetic probe-start, and non-pulse start electronic).

§ 429.70 Alternative methods for determining energy efficiency or energy use.

(a) *General.* A manufacturer of commercial HVAC and WH equipment, distribution transformers, and central air conditioners and heat pumps may not distribute any basic model of such equipment in commerce unless the manufacturer has determined the energy efficiency of the basic model, either from testing the basic model or from applying an alternative method for determining energy efficiency or energy use (AEDM) to the basic model, in accordance with the requirements of this section. In instances where a manufacturer has tested a basic model to validate the alternative method, the energy efficiency of that basic model must be determined and rated according to results from actual testing. In addition, a manufacturer may not knowingly use an AEDM to overrate the efficiency of a basic model. For each basic model of distribution transformer that has a configuration of windings that allows for more than one nominal rated voltage, the manufacturer must determine the basic model's efficiency either at the voltage at which the highest losses occur or at each voltage at which the transformer is rated to operate.

(b) *Testing.* Testing for each covered product or covered equipment must be done in accordance with the sampling plan provisions established in §§ 429.14 through 429.54 and the testing procedures in parts 430 and 431.

(c) *Alternative efficiency determination method (AEDM) for commercial HVAC and WH*

equipment—(1) *Criteria an AEDM must satisfy.* A manufacturer may not apply an AEDM to a basic model to determine its efficiency pursuant to this section unless:

(i) The AEDM is derived from a mathematical model that represents the energy consumption characteristics of the basic model;

(ii) The AEDM is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data; and

(iii) The manufacturer has substantiated the AEDM, in accordance with paragraph (c)(2) of this section.

(2) *Substantiation of an AEDM.* Before using an AEDM, the manufacturer must substantiate and validate the AEDM as follows:

(i) A manufacturer must first apply the AEDM to three or more basic models that have been tested in accordance with §§ 431.173(b) and 431.175(a). The predicted efficiency calculated for each such basic model from application of the AEDM must be within five percent of the efficiency determined from testing that basic model, and the predicted efficiencies calculated for the tested basic models must, on average, be within one percent of the efficiencies determined from testing such basic models; and

(ii) Using the AEDM, the manufacturer must calculate the efficiency of three or more of its basic models. They must be the manufacturer's highest-selling basic models to which the AEDM could apply and different models than those used to develop the AEDM (*i.e.,* different models than those used in paragraph (c)(2)(i) of this section); and

(iii) The manufacturer must test each of these basic models in accordance with § 431.173(b), and either § 431.174(b) or 431.175(a), whichever is applicable; and

(iv) The predicted efficiency calculated for each such basic model from application of the AEDM must be within five percent of the efficiency determined from testing that basic model, and the average of the predicted efficiencies calculated for the tested basic models must be within one percent of the average of the efficiencies determined from testing these basic models.

(3) *Subsequent verification of an AEDM.* If a manufacturer has used an AEDM pursuant to this section,

(i) The manufacturer must have available for inspection by the Department records showing:

(A) The method or methods used;

(B) The mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based;

(C) Complete test data, product information, and related information that the manufacturer generated or acquired under paragraph (c)(1) through (2) of this section; and

(D) The calculations used to determine the average efficiency and energy consumption of each basic model to which an AEDM was applied.

(ii) If requested by the Department, the manufacturer must perform at least one of the following:

(A) Conduct simulations to predict the performance of particular basic models of the commercial HVAC and WH product;

(B) Provide analyses of previous simulations conducted by the manufacturer;

(C) Conduct sample testing of basic models selected by the Department; or

(D) Conduct a combination of these.

(d) *Alternative efficiency determination method for distribution transformers*—A manufacturer may use an AEDM to determine the efficiency of one or more of its untested basic models only if it determines the efficiency of at least five of its other basic models (selected in accordance with paragraph (d)(3) of this section) through actual testing.

(1) *Criteria an AEDM must satisfy.*

(i) The AEDM has been derived from a mathematical model that represents the electrical characteristics of that basic model;

(ii) The AEDM is based on engineering and statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data; and

(iii) The manufacturer has substantiated the AEDM, in accordance with paragraph (d)(2) of this section, by applying it to, and testing, at least five other basic models of the same type, *i.e.,* low-voltage dry-type distribution transformers, medium-voltage dry-type distribution transformers, or liquid-immersed distribution transformers.

(2) *Substantiation of an AEDM.* Before using an AEDM, the manufacturer must substantiate the AEDM's accuracy and reliability as follows:

(i) Apply the AEDM to at least five of the manufacturer's basic models that have been selected for testing in accordance with paragraph (d)(3) of this section, and calculate the power loss for each of these basic models;

(ii) Test at least five units of each of these basic models in accordance with the applicable test procedure and § 429.42, and determine the power loss for each of these basic models;

(iii) The predicted total power loss for each of these basic models, calculated by applying the AEDM pursuant to paragraph (c)(2)(i) of this section, must be within plus or minus five percent of the mean total power loss determined from the testing of that basic model pursuant to paragraph (c)(2)(ii) of this section; and

(iv) Calculate for each of these basic models the percentage that its power loss calculated pursuant to paragraph (c)(2)(i) of this section is of its power loss determined from testing pursuant to paragraph (c)(2)(ii) of this section, compute the average of these percentages, and that calculated average power loss, expressed as a percentage of the average power loss determined from testing, must be no less than 97 percent and no greater than 103 percent.

(3) *Additional testing requirements.* (i) A manufacturer must select basic models for testing in accordance with the following criteria:

(A) Two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior year, or during the prior 12-calendar-month period beginning in 2003,[1] whichever is later;

(B) No two basic models should have the same combination of power and voltage ratings; and

(C) At least one basic model should be single-phase and at least one should be three-phase.

(ii) In any instance where it is impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, the criteria shall be given priority in the order in which they are listed. Within the limits imposed by the criteria, basic models shall be selected randomly.

(4) *Subsequent verification of an AEDM.* (i) Each manufacturer that has used an AEDM under this section shall have available for inspection by the Department of Energy records showing:

(A) The method or methods used;

(B) The mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based;

(C) Complete test data, product information, and related information that the manufacturer has generated or acquired pursuant to paragraph (d)(4) of this section; and

[1] When identifying these five basic models, any basic model that does not comply with Federal energy conservation standards for distribution transformers that may be in effect shall be excluded from consideration.

(D) The calculations used to determine the efficiency and total power losses of each basic model to which the AEDM was applied.

(ii) If requested by the Department, the manufacturer must perform at least one of the following:

(A) Conduct simulations to predict the performance of particular basic models of distribution transformers specified by the Department;

(B) Provide analyses of previous simulations conducted by the manufacturer;

(C) Conduct sample testing of basic models selected by the Department; or

(D) Conduct a combination of these.

(e) *Alternate Rating Method (ARM) for residential split-system central air conditioners and heat pumps—*

(1) *Criteria an ARM must satisfy.* The basis of the ARM referred to in § 429.16(a)(2)(ii) for residential central air conditioners and heat pumps must be a representation of the test data and calculations of a mechanical vapor-compression refrigeration cycle. The major components in the refrigeration cycle must be modeled as "fits" to manufacturer performance data or by graphical or tabular performance data. Heat transfer characteristics of coils may be modeled as a function of face area, number of rows, fins per inch, refrigerant circuitry, air-flow rate and entering-air enthalpy. Additional performance-related characteristics to be considered may include type of expansion device, refrigerant flow rate through the expansion device, power of the indoor fan and cyclic-degradation coefficient. Ratings for untested combinations must be derived from the ratings of a combination tested in accordance with § 429.16(a)(2)(i). The seasonal energy efficiency ratio (SEER) and/or heating seasonal performance factor (HSPF) ratings for an untested combination must be set equal to or less than the lower of the SEER and/or HSPF calculated using the applicable DOE-approved alternative rating method (ARM). If the method includes an ARM/simulation adjustment factor(s), determine the value(s) of the factors(s) that yield the best match between the SEER/HSPF determined using the ARM versus the SEER/HSPF determined from testing in accordance with § 429.16(a)(2)(i). Thereafter, apply the ARM using the derived adjustment factor(s) only when determining the ratings for untested combinations having the same outdoor unit.

(2) *Approval of an ARM.* (i) Manufacturers who elect to use an ARM for determining measures of energy consumption under § 429.16(a)(2)(ii)(B)(1) and paragraph (e)(1) of this section must submit a request for DOE to review the ARM. Send the request to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program (EE–2J), Attention: Alternative Rating Methods (ARM) for Certification and Compliance, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

(ii) Each request to DOE for approval of an ARM must include:

(A) The name, mailing address, telephone number, and e-mail address of the official representing the manufacturer.

(B) Complete documentation of the alternative rating method to allow DOE to evaluate its technical adequacy. The documentation must include a description of the methodology, state any underlying assumptions, and explain any correlations. The documentation should address how the method accounts for the cyclic-degradation coefficient, the type of expansion device, and, if applicable, the indoor fan-off delay. The requestor must submit any computer programs—including spreadsheets—having less than 200 executable lines that implement the ARM. Longer computer programs must be identified and sufficiently explained, as specified above, but their inclusion in the initial submittal package is optional. Applicability or limitations of the ARM (*e.g.,* only covers single-speed units when operating in the cooling mode, covers units with rated capacities of 3 tons or less, not applicable to the manufacturer's product line of non-ducted systems) must be stated in the documentation.

(C) Complete test data from laboratory tests on four mixed (*i.e.,* non-highest-sales-volume combination) systems per each ARM.

(*1*) The four mixed systems must include four different indoor units and at least two different outdoor units. A particular model of outdoor unit may be tested with up to two of the four indoor units. The four systems must include two low-capacity mixed systems and two high-capacity mixed systems. The low-capacity mixed systems may have any capacity. The rated capacity of each high-capacity mixed system must be at least a factor of two higher than its counterpart low-capacity mixed system. The four mixed systems must meet the applicable energy conservation standard in § 430.32(c) in effect at the time of the rating.

(*2*) The four indoor units must come from at least two different coil families, with a maximum of two indoor units coming from the same coil family. Data for two indoor units from the same coil family, if submitted, must come from testing with one of the "low-capacity mixed systems" and one of the "high-capacity mixed systems." A mixed system indoor coil may come from the same coil family as the highest-sales-volume-combination indoor unit (*i.e.,* the "matched" indoor unit) for the particular outdoor unit. Data on mixed systems where the indoor unit is now obsolete will be accepted towards the ARM-validation submittal requirement if it is from the same coil family as other indoor units still in production.

(*3*) The first two sentences of paragraph (e)(2)(ii)(C)(*2*) of this section do not apply if the manufacturer offers indoor units from only one coil family. In this case only, all four indoor coils must be selected from this one coil family. If approved, the ARM will be specifically limited to applications for this one coil family.

(D) All product information on each mixed system indoor unit, each matched system indoor unit, and each outdoor unit needed to implement the proposed ARM. The calculated ratings for the four mixed systems, as determined using the proposed ARM, must be provided along with any other related information that will aid the verification process.

(E) If request for approval is for an updated ARM, manufacturers must identify modifications made to the ARM since the last submittal, including any ARM/simulation adjustment factor(s) added since the ARM was last approved by DOE.

(iii) Approval must be received from the Department to use the ARM before the ARM may be used for rating split-system central air conditioners and heat pumps. If a manufacturer has a DOE-approved ARM for products also distributed in commerce by a private labeler, the ARM may also be used by the private labeler for rating these products. Once an ARM is approved, DOE may contact a manufacturer to learn if their ARM has been modified in any way and to verify that the ARM is being applied as approved. DOE will give follow-up priority to individual combinations having questionably high ratings (*e.g.,* a coil-only system having a rating that exceeds the rating of a coil-only highest sales volume combination by more than 6 percent).

(3) *Changes to DOE's regulations requiring re-approval of an ARM.* Manufacturers who elect to use an ARM for determining measures of energy consumption under § 429.16(a)(2)(ii)(B)(*1*) and paragraph (e)(1) of this section must submit a

request for DOE to review the ARM when:

(i) DOE amends the energy conservation standards as specified in § 430.32 for residential central air conditioners and heat pumps. In this case, any testing and evidence required under paragraph (e)(2) of this section shall be developed with units that meet the amended energy conservation standards specified in § 430.32. Re-approval for the ARM must be obtained before the compliance date of amended energy conservation standards. (ii) DOE amends the test procedure for residential air conditioners and heat pumps as specified in Appendix M to Subpart B of Part 430. Re-approval for the ARM must be obtained before the compliance date of amended test procedures.

(4) Manufacturers that elect to use an ARM for determining measures of energy consumption under § 429.16(a)(2)(ii)(B)(*1*) and paragraph (e)(1) of this section must regularly either subject a sample of their units to independent testing, *e.g.,* through a voluntary certification program, in accordance with the applicable DOE test procedure, or have the representations reviewed by an independent state-registered professional engineer who is not an employee of the manufacturer. The manufacturer may continue to use the ARM only if the testing establishes, or the registered professional engineer certifies, that the results of the ARM accurately represent the energy consumption of the unit(s). Any proposed change to the alternative rating method must be approved by DOE prior to its use for rating.

(5) Manufacturers who choose to use computer simulation or engineering analysis for determining measures of energy consumption under § 429.16(a)(2)(ii)(B)(*1*) and paragraphs (e)(1) through (e)(4) of this section must permit representatives of the Department of Energy to inspect for verification purposes the simulation method(s) and computer program(s) used. This inspection may include conducting simulations to predict the performance of particular outdoor unit "indoor" unit combinations specified by DOE, analysis of previous simulations conducted by the manufacturer, or both.

§ 429.71 Maintenance of records.

(a) The manufacturer of any covered product or covered equipment shall establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of this part, part 430, and part 431. Any manufacturer who chooses to use an alternative method for determining energy efficiency or energy use in accordance with § 429.70 must retain the records required by that section, any other records of any testing performed to support the use of the alternative method, and any certifications required by that section, on file for review by DOE for two years following the discontinuance of all models or combinations whose ratings were based on the alternative method.

(b) Such records shall be organized and indexed in a fashion that makes them readily accessible for review by DOE upon request.

(c) The records shall be retained by the manufacturer for a period of two years from the date that the manufacturer or third party submitter has notified DOE that the model has been discontinued in commerce.

Appendix A to Subpart B of Part 429—Student's t-Distribution Values for Certification Testing

FIGURE 1—T-DISTRIBUTION VALUES FOR CERTIFICATION TESTING

[One-Sided]

Degrees of freedom (from Appendix D)	Confidence Interval			
	90%	95%	97.5%	99%
1	3.078	6.314	12.71	31.82
2	1.886	2.920	4.303	6.965
3	1.638	2.353	3.182	4.541
4	1.533	2.132	2.776	3.747
5	1.476	2.015	2.571	3.365
6	1.440	1.943	2.447	3.143
7	1.415	1.895	2.365	2.998
8	1.397	1.860	2.306	2.896
9	1.383	1.833	2.262	2.821
10	1.372	1.812	2.228	2.764
11	1.363	1.796	2.201	2.718
12	1.356	1.782	2.179	2.681
13	1.350	1.771	2.160	2.650
14	1.345	1.761	2.145	2.624
15	1.341	1.753	2.131	2.602
16	1.337	1.746	2.120	2.583
17	1.333	1.740	2.110	2.567
18	1.330	1.734	2.101	2.552
19	1.328	1.729	2.093	2.539
20	1.325	1.725	2.086	2.528

Subpart C—Enforcement

§ 429.100 Purpose and scope.

This subpart describes the enforcement authority of DOE to ensure compliance with the conservation standards and regulations.

§ 429.102 Prohibited acts subjecting persons to enforcement action.

(a) Each of the following actions is prohibited:

(1) Failure of a manufacturer to provide, maintain, permit access to, or copying of records required to be supplied under the Act and this part or failure to make reports or provide other information required to be supplied under the Act and this part, including but not limited to failure to properly certify covered products and covered equipment in accordance with § 429.12 and §§ 429.14 through 429.54;

(2) Failure to test any covered product or covered equipment subject to an

applicable energy conservation standard in conformance with the applicable test requirements prescribed in 10 CFR parts 430 or 431;

(3) Deliberate use of controls or features in a covered product or covered equipment to circumvent the requirements of a test procedure and produce test results that are unrepresentative of a product's energy or water consumption if measured pursuant to DOE's required test procedure;

(4) Failure of a manufacturer to supply at the manufacturer's expense a requested number of covered products or covered equipment to a designated test laboratory in accordance with a test notice issued by DOE;

(5) Failure of a manufacturer to permit a DOE representative to observe any testing required by the Act and this part and inspect the results of such testing;

(6) Distribution in commerce by a manufacturer or private labeler of any new covered product or covered equipment that is not in compliance with an applicable energy conservation standard prescribed under the Act;

(7) Distribution in commerce by a manufacturer or private labeler of a basic model of covered product or covered equipment after a notice of noncompliance determination has been issued to the manufacturer or private labeler;

(8) Knowing misrepresentation by a manufacturer or private labeler by certifying an energy use or efficiency rating of any covered product or covered equipment distributed in commerce in a manner that is not supported by test data;

(9) For any manufacturer, distributor, retailer, or private labeler to distribute in commerce an adapter that—

(i) Is designed to allow an incandescent lamp that does not have a medium screw base to be installed into a fixture or lamp holder with a medium screw base socket; and

(ii) Is capable of being operated at a voltage range at least partially within 110 and 130 volts; or

(10) For any manufacturer or private labeler to knowingly sell a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product.

(b) When DOE has reason to believe that a manufacturer or private labeler has undertaken a prohibited act listed in paragraph (a) of this section, DOE may:

(1) Issue a notice of noncompliance determination;

(2) Impose additional certification testing requirements;

(3) Seek injunctive relief;

(4) Assess a civil penalty for knowing violations; or

(5) Undertake any combination of the above.

§ 429.104 Assessment testing.

DOE may, at any time, test a basic model to assess whether the basic model is in compliance with the applicable energy conservation standard(s).

§ 429.106 Investigation of compliance.

(a) DOE may initiate an investigation that a basic model may not be compliant with an applicable conservation standard, certification requirement or other regulation at any time.

(b) DOE may, at any time, request any information relevant to determining compliance with any requirement under parts 429, 430 and 431, including the data underlying certification of a basic model. Such data may be used by DOE to make a determination of compliance or noncompliance with an applicable standard.

§ 429.110 Enforcement testing.

(a) *General provisions.* (1) If DOE has reason to believe that a basic model is not in compliance it may test for enforcement.

(2) DOE will select and test units pursuant to paragraphs (c) and (e) of this section.

(3) Testing will be conducted at a lab accredited to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), "General requirements for the competence of testing and calibration laboratories," ISO/IEC 17025:2005(E) (incorporated by reference; *see* § 429.4). If testing cannot be completed at an independent lab, DOE, at its discretion, may allow enforcement testing at a manufacturer's lab, so long as the lab is accredited to ISO/IEC 17025:2005(E) and DOE representatives witness the testing.

(b) *Test notice.* (1) To obtain units for enforcement testing to determine compliance with an applicable standard, DOE will issue a test notice addressed to the manufacturer in accordance with the following requirements:

(i) DOE will send the test notice to the manufacturer's certifying official or other company official.

(ii) The test notice will specify the basic model that will be selected for testing, the method of selecting the test sample, the maximum size of the sample and the size of the initial test sample, the dates at which testing is scheduled to be started and completed, and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing and may include alternative models or basic models.

(iii) DOE will state in the test notice that it will select the units of a basic model to be tested from the manufacturer, from one or more distributors, and/or from one or more retailers. If any unit is selected from a distributor or retailer, the manufacturer shall make arrangements with the distributor or retailer for compensation for or replacement of any such units.

(iv) DOE may require in the test notice that the manufacturer of a basic model ship or cause to be shipped from a retailer or distributor at its expense the requested number of units of a basic model specified in such test notice to the testing laboratory specified in the test notice. The manufacturer shall ship the specified initial test unit(s) of the basic model to the testing laboratory within 5 working days from the time units are selected.

(v) If DOE determines that the units identified are low-volume or built-to-order products, DOE will contact the manufacturer to develop a plan for enforcement testing in lieu of paragraphs (ii)–(iv) of this section.

(2) [Reserved]

(c) *Test unit selection.* (1) To select units for testing from a:

(i) Manufacturer's warehouse, distributor, or other facility affiliated with the manufacturer. DOE will select a batch sample at random in accordance with the provisions in paragraph (e) of this section and the conditions specified in the test notice. DOE will randomly select an initial test sample of units from the batch sample for testing in accordance with appendices A through C of this subpart. DOE will make a determination whether an alternative sample size will be used in accordance with the provisions in paragraph (e)(1)(iv) of this section.

(ii) Retailer or other facility not affiliated with the manufacturer. DOE will select an initial test sample of units at random that satisfies the minimum units necessary for testing in accordance with the provisions in appendices A through C of this subpart and the conditions specified in the test notice. Depending on the results of the testing, DOE may select additional units for testing from a retailer in accordance with appendices A through C of this subpart. If the full sample is not available from a retailer, DOE will make a determination whether an alternative sample size will be used in accordance with the provisions in paragraph (e)(1)(iv) of this section.

(2) Units tested in accordance with the applicable test procedure under this part by DOE or another Federal agency, pursuant to other provisions or programs, may count toward units in the test sample.

(3) The resulting test data shall constitute official test data for the basic model. Such test data will be used by DOE to make a determination of compliance or noncompliance if a sufficient number of tests have been conducted to satisfy the requirements of paragraph (e) of this section and appendices A through C of this subpart.

(d) *Test unit preparation.* (1) Prior to and during testing, a test unit selected for enforcement testing shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable DOE test procedure. One test shall be conducted for each test unit in accordance with the applicable test procedures prescribed in parts 430 and 431.

(2) No quality control, testing or assembly procedures shall be performed on a test unit, or any parts and subassemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(3) A test unit shall be considered defective if such unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according to the manufacturer's design and operating instructions. Defective units, including those damaged due to shipping or handling, shall be reported immediately to DOE. DOE may authorize testing of an additional unit on a case-by-case basis.

(e) *Basic model compliance.* (1) DOE will evaluate whether a basic model complies with the applicable energy conservation standard(s) based on testing conducted in accordance with the applicable test procedures specified in parts 430 and 431, and with the following statistical sampling procedures:

(i) For products with applicable energy conservation standard(s) in § 430.32, and commercial pre-rinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, commercial clothes washers, and metal halide lamp ballasts, DOE will use a sample size of not more than 21 units and follow the sampling plans in appendix A of this subpart (Sampling for Enforcement Testing of Covered Consumer Products and Certain High-Volume Commercial Equipment).

(ii) For automatic commercial ice makers; commercial refrigerators, freezers, and refrigerator-freezers; refrigerated bottled or canned vending machines; and commercial HVAC and WH equipment, DOE will use an initial sample size of not more than four units and follow the sampling plans in appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products). If fewer than four units of a basic model are available for testing when the manufacturer receives the notice, then:

(A) DOE will test the available unit(s); or

(B) If one or more other units of the basic model are expected to become available within 30 calendar days, DOE may instead, at its discretion, test either:

(*1*) The available unit(s) and one or more of the other units that subsequently become available (up to a maximum of four); or

(*2*) Up to four of the other units that subsequently become available.

(iii) For distribution transformers, DOE will use an initial sample size of not more than five units and follow the sampling plans in appendix C of this subpart (Sampling Plan for Enforcement Testing of Distribution Transformers). If fewer than five units of a basic model are available for testing when the manufacturer receives the test notice, then:

(A) DOE will test the available unit(s); or

(B) If one or more other units of the basic model are expected to become available within 30 calendar days, the Department may instead, at its discretion, test either:

(*1*) The available unit(s) and one or more of the other units that subsequently become available (up to a maximum of five); or

(*2*) Up to five of the other units that subsequently become available.

(iv) Notwithstanding paragraphs (e)(1)(i) through (e)(1)(iii) of this section, if testing of the available or subsequently available units of a basic model would be impractical, as for example when a basic model has unusual testing requirements or has limited production, DOE may in its discretion decide to base the determination of compliance on the testing of fewer than the otherwise required number of units.

(v) When DOE makes a determination in accordance with section (e)(1)(iv) to test less than the number of units specified in parts (d)(1)(i) through (d)(1)(iii) of this section, DOE will base the compliance determination on the results of such testing in accordance with appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products) using a sample size (n_1) equal to the number of units tested.

(vi) For the purposes of paragraphs (e)(1)(i) through (e)(1)(v) of this section, available units are those that are available for distribution in commerce within the United States.

§ 429.114 Notice of noncompliance and notice to cease distribution of a basic model.

(a) In the event that DOE determines a basic model is noncompliant with an applicable energy conservation standard, or if a manufacturer or private labeler determines a basic model to be in noncompliance, DOE may issue a notice of noncompliance determination to the manufacturer or private labeler. This notice of noncompliance determination will notify the manufacturer or private labeler of its obligation to:

(1) Immediately cease distribution in commerce of the basic model;

(2) Give immediate written notification of the determination of noncompliance to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance; and

(3) Provide DOE, within 30 calendar days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

(b) In the event that DOE determines a manufacturer has failed to comply with an applicable certification requirement with respect to a particular basic model, DOE may issue a notice of noncompliance determination to the manufacturer or private labeler. This notice of noncompliance determination will notify the manufacturer or private labeler of its obligation to:

(1) Immediately cease distribution in commerce of the basic model;

(2) Immediately comply with the applicable certification requirement; and/or

(3) Provide DOE within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of the basic model.

(c) If a manufacturer or private labeler fails to comply with the required actions in the notice of noncompliance determination as set forth in paragraphs (a) or (b) of this section, the General Counsel (or delegee) may seek, among other remedies, injunctive action and civil penalties, where appropriate.

(d) The manufacturer may modify a basic model determined to be

noncompliant with an applicable energy conservation standard in such manner as to make it comply with the applicable standard. Such modified basic model shall then be treated as a new basic model and must be certified in accordance with the provisions of this part; except that in addition to satisfying all requirements of this part, any models within the basic model must be assigned new model numbers and the manufacturer shall also maintain, and provide upon request to DOE, records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce.

§ 429.116 Additional certification testing requirements.

Pursuant to § 429.102(b)(2), if DOE determines that independent, third-party testing is necessary to ensure a manufacturer's compliance with the rules of this part, part 430, or part 431, a manufacturer must base its certification of a basic model under subpart B of this part on independent, third-party laboratory testing.

§ 429.118 Injunctions.

If DOE has reason to seek an injunction under the Act:

(a) DOE will notify the manufacturer, private labeler or any other person as required, of the prohibited act at issue and DOE's intent to seek a judicial order enjoining the prohibited act unless the manufacturer, private labeler or other person, delivers to DOE within 15 calendar days a corrective action and compliance plan, satisfactory to DOE, of the steps it will take to ensure that the prohibited act ceases. DOE will monitor the implementation of such plan.

(b) If the manufacturer, private labeler or any other person as required, fails to cease engaging in the prohibited act or fails to provide a satisfactory corrective action and compliance plan, DOE may seek an injunction.

§ 429.120 Maximum civil penalty.

Any person who knowingly violates any provision of § 429.102(a) of this part may be subject to assessment of a civil penalty of no more than $200 for each violation. As to § 429.102(a)(1) with respect to failure to certify, and as to § 429.102(a)(2), (5) through (9), each unit of a covered product or covered equipment distributed in violation of such paragraph shall constitute a separate violation. For violations of § 429.102(a)(1), (3), and (4), each day of noncompliance shall constitute a separate violation for each basic model at issue.

§ 429.122 Notice of proposed civil penalty.

(a) The General Counsel (or delegee) shall provide notice of any proposed civil penalty.

(b) The notice of proposed penalty shall:

(1) Include the amount of the proposed penalty;

(2) Include a statement of the material facts constituting the alleged violation; and

(3) Inform the person of the opportunity to elect in writing within 30 calendar days of receipt of the notice to have the procedures of § 429.128 (in lieu of those of § 429.126) apply with respect to the penalty.

§ 429.124 Election of procedures.

(a) In responding to a notice of proposed civil penalty, the respondent may request:

(1) An administrative hearing before an Administrative Law Judge (ALJ) under § 429.126 of this part; or

(2) Elect to have the procedures of § 429.128 apply.

(b) Any election to have the procedures of § 429.128 apply may not be revoked except with the consent of the General Counsel (or delegee).

(c) If the respondent fails to respond to a notice issued under § 429.120 or otherwise fails to indicate its election of procedures, DOE shall refer the civil penalty action to an ALJ for a hearing under § 429.126.

§ 429.126 Administrative law judge hearing and appeal.

(a) When elected pursuant to § 429.124, DOE shall refer a civil penalty action brought under § 429.122 of this part to an ALJ, who shall afford the respondent an opportunity for an agency hearing on the record.

(b) After consideration of all matters of record in the proceeding, the ALJ will issue a recommended decision, if appropriate, recommending a civil penalty. The decision will include a statement of the findings and conclusions, and the reasons therefore, on all material issues of fact, law, and discretion.

(c)(1) The General Counsel (or delegee) shall adopt, modify, or set aside the conclusions of law or discretion contained in the ALJ's recommended decision and shall set forth a final order assessing a civil penalty. The General Counsel (or delegee) shall include in the final order the ALJ's findings of fact and the reasons for the final agency actions.

(2) Any person against whom a penalty is assessed under this section may, within 60 calendar days after the date of the final order assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the final order, or the court may remand the proceeding to the Department for such further action as the court may direct.

§ 429.128 Immediate issuance of order assessing civil penalty.

(a) If the respondent elects to forgo an agency hearing pursuant to § 429.124, the General Counsel (or delegee) shall issue an order assessing the civil penalty proposed in the notice of proposed penalty under § 429.122, 30 calendar days after the respondent's receipt of the notice of proposed penalty.

(b) If within 60 calendar days of receiving the assessment order in paragraph (a) of this section the respondent does not pay the civil penalty amount, DOE shall institute an action in the appropriate United States District Court for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

§ 429.130 Collection of civil penalties.

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under § 429.126 or after the appropriate District Court has entered final judgment in favor of the Department under § 429.128, the General Counsel (or delegee) shall institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

§ 429.132 Compromise and settlement.

(a) DOE may compromise, modify, or remit, with or without conditions, any civil penalty (with leave of court if necessary).

(b) In exercising its authority under paragraph (a) of this section, DOE may consider the nature and seriousness of the violation, the efforts of the respondent to remedy the violation in a timely manner, and other factors as justice may require.

(c) DOE's authority to compromise, modify or remit a civil penalty may be

exercised at any time prior to a final decision by the United States Court of Appeals if § 429.126 procedures are utilized, or prior to a final decision by the United States District Court, if § 429.128 procedures are utilized.

(d) Notwithstanding paragraph (a) of this section, DOE or the respondent may propose to settle the case. If a settlement is agreed to by the parties, the respondent is notified and the case is closed in accordance with the terms of the settlement.

APPENDIX A TO SUBPART C OF PART 429—SAMPLING PLAN FOR ENFORCEMENT TESTING OF COVERED CONSUMER PRODUCTS AND CERTAIN HIGH-VOLUME COMMERCIAL EQUIPMENT

(a) The first sample size (n_1) for enforcement testing must be four or more units, except as provided by § 429.57(e)(1)(i).

(b) Compute the mean of the measured energy performance (x_1) for all tests as follows:

$$x_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right) \qquad [1]$$

where x_i is the measured energy or water efficiency or consumption from test i, and n_1 is the total number of tests.

(c) Compute the standard deviation (s_1) of the measured energy performance from the n_1 tests as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1}(x_i - x_1)^2}{n_1 - 1}} \qquad [2]$$

(d) Compute the standard error (s_{x1}) of the measured energy performance from the n_1 tests as follows:

$$s_{x_1} = \frac{s_1}{\sqrt{n_1}} \qquad [3]$$

(e)(1) Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy efficiency standard (EES) as the desired mean and a probability level of 95 percent (two-tailed test) as follows: LCL_1 EES — $ts_{x1\ x}$

$$LCL_1 = EES - ts_{x_1} \qquad [4] \text{ and } UCL_1 = EES + ts_{x_1} \qquad [5]$$

where t is the statistic based on a 95 percent two-tailed probability level with degrees of freedom ($n_1 - 1$).

(2) For an energy efficiency or water efficiency standard, compare the mean of the first sample (x_1) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(i) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(ii) If the mean of the first sample is equal to or greater than the upper control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(iii) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step (e)(3).

(3) For an energy efficiency or water efficiency standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05EES}\right)^2 - n_1 \qquad [6]$$

where s_1 and t have the values used in equations 2 and 4, respectively. The term "0.05 EES" is the difference between the applicable energy efficiency or water efficiency standard and 95 percent of the standard, where 95 percent of the standard is taken as the lower control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5

percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard. Given the solution value of n_2, determine one of the following:

(i) If the value of n_2 is less than or equal to zero and if the mean energy or water efficiency of the first sample (x_1) is either equal to or greater than the lower control limit (LCL_1) or equal to or greater than 95 percent of the applicable energy efficiency or water efficiency standard (EES), whichever is greater, *i.e.,* if $n_2 \leq 0$ and $x_1 \geq$ max (LCL_1, 0.95 EES), the basic model is in compliance and testing is at an end.

(ii) If the value of n_2 is less than or equal to zero and the mean energy efficiency of the first sample (x_1) is less than the lower control limit (LCL_1) or less than 95 percent of the applicable energy or water efficiency standard (EES), whichever is greater, *i.e.,* if $n_2 \leq 0$ and $x_1 \leq$ max (LCL_1, 0.95 EES), the basic model is not in compliance and testing is at an end.

(iii) If the value of n_2 is greater than zero, then, the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6). If the value of n_2 so calculated is greater than $21 - n_1$, set n_2 equal to $21 - n_1$.

(4) Compute the combined mean (x_2) of the measured energy or water efficiency of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2}\left(\sum_{i=1}^{n_1+n_2} x_i\right) \qquad [7]$$

(5) Compute the standard error (S_{x2}) of the measured energy or water performance of the n_1 and n_2 units in the combined first and second samples as follows:

$$s_{x_2} = \frac{s^1}{\sqrt{n_1 + n_2}} \qquad [8]$$

Note: s_1 is the value obtained in Step (c).

(6) For an energy efficiency standard (EES), compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE EES as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step (e)(1)) as follows:

$$LCL_2 = EES - ts_{x_2} \qquad [9]$$

where the t-statistic has the value obtained in Step (e)(1) and s_{x2} is the value obtained in Step (e)(5).

(7) For an energy efficiency standard (EES), compare the combined sample mean (x_2) to the lower control limit (LCL_2) to determine one of the following:

(i) If the mean of the combined sample (x_2) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, *i.e.,* if $x_2 <$ max (LCL_2, 0.95 EES), the basic model is not compliant and testing is at an end.

(iii) If the mean of the combined sample (x_2) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, *i.e.,* if $x_2 \geq$ max (LCL_2, 0.95 EES), the basic model is in compliance and testing is at an end.

(f)(1) Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy consumption standard (ECS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows:

$$LCL_1 = ECS - ts_{x_1} \quad \text{and} \quad UCL_1 = ECS + ts_{x_1} \qquad [10]$$

where t is the statistic based on a 95 percent two-tailed probability level with degrees of freedom ($n_1 - 1$).

(2) For an energy or water consumption standard, compare the mean of the first sample (x_1) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(i) If the mean of the first sample is above the upper control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(ii) If the mean of the first sample is equal to or less than the lower control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(iii) If the sample mean is equal to or less than the upper control limit but greater than the lower control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step (f)(3).

(3) For an Energy or Water Consumption Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05ECS}\right)^2 - n_1 \qquad [11]$$

where $s_1$and t have the values used in equations (2) and (10), respectively. The term "0.05 ECS" is the difference between the applicable energy or water consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size ($n_1 + n_2$) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal to the applicable standard. Given the solution value of n_2, determine one of the following:

(i) If the value of n_2 is less than or equal to zero and if the mean energy or water consumption of the first sample (x_1) is either equal to or less than the upper control limit (UCL_1) or equal to or less than 105 percent of the applicable energy or water consumption standard (ECS), whichever is less, *i.e.,* if $n_2 \leq 0$ and $x_1 \leq$ min (UCL_1, 1.05 ECS), the basic model is in compliance and testing is at an end.

(ii) If the value of n_2 is less than or equal to zero and the mean energy or water consumption of the first sample (x_1) is greater than the upper control limit (UCL_1) or more than 105 percent of the applicable energy or water consumption standard (ECS), whichever is less, *i.e.,* if $n_2 \leq 0$ and $x_1 >$ min (UCL_1, 1.05 EPS), the basic model is not compliant and testing is at an end.

(iii) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (11). If the value of n_2 so calculated is greater than $21 - n_1$, set n_2 equal to $21 - n_1$.

(4) Compute the combined mean (x_2) of the measured energy or water consumption of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2}\left(\sum_{i=1}^{n_1+n_2} x_i\right) \qquad [12]$$

(5) Compute the standard error (S_{x2}) of the measured energy or water consumption of the n_1 and n_2 units in the combined first and second samples as follows:

$$s_{x_2} = \frac{s^1}{\sqrt{n_1 + n_2}} \qquad [13]$$

Note: s_1 is the value obtained in Step (c).

(6) For an energy or water consumption standard (ECS), compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE ECS as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step (f)(1)) as follows:

$$UCL_1 = ECS + ts_{x_1} \qquad [14]$$

where the t-statistic has the value obtained in (f)(1).

(7) For an energy or water consumption standard (ECS), compare the combined sample mean (x_2) to the upper control limit (UCL_2) to determine one of the following:

(i) If the mean of the combined sample (x_2) is greater than the upper control limit (UCL_2) or 105 percent of the ECS whichever is less, *i.e.,* if $x_2 > \min(UCL_2, 1.05\ ECS)$, the basic model is not compliant and testing is at an end.

(ii) If the mean of the combined sample (x_2) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (ECS), whichever is less, *i.e.,* if $x_2 \leq \min(UCL_2, 1.05\ ECS)$, the basic model is in compliance and testing is at an end.

APPENDIX B TO SUBPART C OF PART 429—SAMPLING PLAN FOR ENFORCEMENT TESTING OF COVERED EQUIPMENT AND CERTAIN LOW-VOLUME COVERED PRODUCTS

The Department will determine compliance as follows:

(a) The first sample size (n_1) must be four or more units, except as provided by § 429.57(e)(1)(ii).

(b) Compute the mean of the measured energy performance (x_1) for all tests as follows:

$$x_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right) \qquad [1]$$

where x_i is the measured energy efficiency or consumption from test i, and n_1 is the total number of tests.

(c) Compute the standard deviation (s_1) of the measured energy performance from the n_1 tests as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1}(x_i - x_1)^2}{n_1 - 1}} \qquad [2]$$

(d) Compute the standard error (s_{x1}) of the measured energy performance from the n_1 tests as follows:

$$s_{x_1} = \frac{s_1}{\sqrt{n_1}} \qquad [3]$$

(e)(1) For an energy efficiency standard (EES), determine the appropriate lower control limit (LCL_1) according to:

$$LCL_1 = EES - ts_{x_1} \qquad [4a]$$

or

$$LCL_1 = 0.95EES, \qquad [4b]$$

And use whichever is greater. Where EES is the energy efficiency standard and t is a statistic based on a 97.5 percent, one-sided confidence limit and a sample size of n_1.

(2) For an energy consumption standard (ECS), determine the appropriate upper control limit (UCL_1) according to:

$$UCL_1 = ECS + ts_{x_1} \quad [5a]$$

or

$$UCL_1 = 1.05ECS, \quad [5b]$$

And use whichever is less, where ECS is the energy consumption standard and t is a statistic based on a 97.5 percent, one-sided confidence limit and a sample size of n_1.

(f)(1) Compare the sample mean to the control limit.

(i) The basic model is in compliance and testing is at an end if:

(A) For an energy or water efficiency standard, the sample mean is equal to or greater than the lower control limit, or

(B) For an energy or water consumption standard, the sample mean is equal to or less than the upper control limit.

APPENDIX C TO SUBPART C OF PART 429—SAMPLING PLAN FOR ENFORCEMENT TESTING OF DISTRIBUTION TRANSFORMERS

(a) When testing distribution transformers, the number of units in the sample (m_1) shall be in accordance with § 429.47(a) and DOE shall perform the following number of tests:

(1) If DOE tests four or more units, it will test each unit once;

(2) If DOE tests two or three units, it will test each unit twice; or

(3) If DOE tests one unit, it will test that unit four times.

(b) DOE shall determine compliance as follows:

(1) Compute the mean (X_1) of the measured energy performance of the n_1 tests in the first sample as follows:

$$X_1 = \frac{1}{n_1}\sum_{i=1}^{n_1} X_i \quad [1]$$

where X_i is the measured efficiency of test i.

(2) Compute the sample standard deviation (S_1) of the measured efficiency of the n_1 tests in the first sample as follows:

$$S_1 = \sqrt{\sum_{i=1}^{n_1}\frac{(X_i - X_1)^2}{n_1 - 1}} \quad [2]$$

(3) Compute the standard error ($SE(X_1)$) of the mean efficiency of the first sample as follows:

$$SE(X_1) = \frac{S_1}{\sqrt{n_1}} \quad [3]$$

(4) Compute the sample size discount ($SSD(m_1)$) as follows:

$$SSD(m_1) = \frac{100}{1 + \left(1 + \frac{0.08}{\sqrt{m_1}}\right)\left(\frac{100}{RE} - 1\right)} \quad [4]$$

where m_1 is the number of units in the sample, and RE is the applicable DOE efficiency when the test is to determine compliance with the applicable energy conservation standard, or is the labeled efficiency when the test is to determine compliance with the labeled efficiency value.

(5) Compute the lower control limit (LCL_1) for the mean of the first sample as follows:

$$LCL_1 = SSD(m_1) - tSE(\bar{X}_1) \quad [5]$$

Where t is statistic based on a 97.5 percent one-tailed t test with degrees of freedom (from Appendix D) $n_1 - 1$.

(6) Compare the mean of the first sample (X_1) with the lower control limit (LCL_1) to determine one of the following:

(i) If the mean of the first sample is below the lower control limit, then the basic model is not compliant and testing is at an end.

(ii) If the mean is equal to or greater than the lower control limit, no final determination of compliance or noncompliance can be made; proceed to Step (7).

(7) Determine the recommended sample size (n) as follows:

$$n = \left[\frac{tS_1(108 - 0.08RE)}{RE(8 - 0.08RE)}\right]^2 \quad [6]$$

Given the value of n, determine one of the following:

(i) If the value of n is less than or equal to n_1 and if the mean energy efficiency of the first sample (X_1) is equal to or greater than the lower control limit (LCL_1), the basic model is in compliance and testing is at an end.

(ii) If the value of n is greater than n_1, the basic model is not compliant. The size of a second sample n_2 is determined to be the smallest integer equal to or greater than the difference $n - n_1$. If the value of n_2 so calculated is greater than $21 - n_1$, set n_2 equal to $21 - n_1$.

(8) Compute the combined (X_2) mean of the measured energy performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{X}_2 = \frac{1}{n_1 + n_2}\sum_{i=1}^{n_1+n_2} X_i \quad [7]$$

(9) Compute the standard error ($SE(X_2)$) of the mean full-load efficiency of the n_1 and n_2 units in the combined first and second samples as follows:

$$SE(\bar{X}_2) = \frac{S_1}{\sqrt{n_1 + n_2}} \quad [8]$$

(Note that S_1 is the value obtained above in (2).)

(10) Set the lower control limit (LCL_2) to,

$$LCL_2 = SSD(m_1) - tSE(\bar{X}_2) \quad [9]$$

where t has the value obtained in (5) and $SSD(m_1)$ is sample size discount determined in (4), and compare the combined sample mean (X_2) to the lower control limit (LCL_2) to determine one of the following:

(i) If the mean of the combined sample (X_2) is less than the lower control limit (LCL_2), the basic model is not compliant and testing is at an end.

(ii) If the mean of the combined sample (X_2) is equal to or greater than the lower control limit (LCL_2), the basic model is in compliance and testing is at an end.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 2. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 3. In § 430.2 revise the definitions of "Act," "basic model," and "Energy conservation standard" to read as follows:

§ 430.2 Definitions.

* * * * *

Act means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. 6291–6316.

* * * * *

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency; and

(1) With respect to general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps: Lamps that have essentially identical light output and electrical characteristics—including lumens per watt (lm/W) and color rendering index (CRI).

(2) With respect to faucets and showerheads: Have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest flow mode.

* * * * *

Energy conservation standard means any standards meeting the definitions of that term in 42 U.S.C. 6291(6) and 42 U.S.C. 6311(18) as well as any other water conservation standards and design requirements found in this part or parts 430 or 431.

* * * * *

§ 430.24 [Removed and Reserved]

■ 4. Remove and reserve § 430.24.

■ 5. In § 430.27 revise paragraph (b)(1) to read as follows:

§ 430.27 Petitions for waiver and applications for interim waiver.

* * * * *

(b)(1) A Petition for Waiver shall be submitted either electronically to *AS_Waiver_Requests@ee.doe.gov* or by mail, in triplicate, to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue, SW., Mailstop EE–2J, Washington, DC 20585–0121. Each Petition for Waiver shall:

* * * * *

■ 6. In Appendix A to subpart B of part 430, revise paragraph 5.1 to read as follows:

Appendix A to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

* * * * *

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figures 5.1 and 5.2 of HRF–1–2008 (incorporated by reference; *see* § 430.3) and shall be accurate to within ± 0.5 °F (0.3 °C). No freezer temperature measurements need be taken in an all-refrigerator model.

If the interior arrangements of the cabinet do not conform with those shown in Figure 5.1 and 5.2 of HRF–1–2008, the product may be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 429.14, and the certification report shall indicate that non-standard sensor locations were used.

* * * * *

■ 7. In Appendix A1 to subpart B of part 430, revise paragraph 5.1 to read as follows:

Appendix A1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

* * * * *

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figures 7.1 and 7.2 of HRF–1–1979 (incorporated by reference; *see* § 430.3) and shall be accurate to within ±0.5 °F (0.3 °C). No freezer temperature measurements need be taken in an all-refrigerator model.

If the interior arrangements of the cabinet do not conform with those shown in Figure 7.1 and 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 429.14, and the certification report shall indicate that non-standard sensor locations were used.

* * * * *

■ 8. In Appendix B to subpart B of part 430, revise paragraph 5.1 to read as follows:

Appendix B to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

* * * * *

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figure 5–2 of HRF–1–2008 (incorporated by reference; *see* § 430.3) and shall be accurate to within ± 0.5 °F (0.3 °C).

If the interior arrangements of the cabinet do not conform with those shown in Figure 5.2 of HRF–1–2008, the product may be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 429.14, and the certification report shall indicate that non-standard sensor locations were used.

* * * * *

■ 9. In Appendix B1 to subpart B of part 430, revise paragraph 5.1 to read as follows:

Appendix B1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

* * * * *

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figure 7.2 of HRF–1–1979 (incorporated by reference; *see* § 430.3) and shall be accurate to within ±0.5 °F (0.3 °C).

If the interior arrangements of the cabinet do not conform with those shown in Figure 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 429.14, and the certification report shall indicate that non-standard sensor locations were used.

* * * * *

Subpart F [Removed and Reserved]

■ 10. Remove and reserve Subpart F, consisting of §§ 430.60 through 430.75, and Appendix A and B to subpart F of part 430.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 11. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 12. In § 431.2 add the definitions of "alternate efficiency determination method or AEDM," "Commercial HVAC &WH product," "Energy conservation standard," "Flue loss," "Industrial equipment," and "Private labeler," in alphabetical order to read as follows:

§ 431.2 Definitions.

* * * * *

Alternate efficiency determination method or AEDM means a method of calculating the efficiency of a commercial HVAC and WH product, in terms of the descriptor used in or under section 342(a) of the Act to state the energy conservation standard for that product.

Commercial HVAC & WH product means any small or large commercial package air-conditioning and heating equipment, packaged terminal air conditioner, packaged terminal heat pump, commercial packaged boiler, hot water supply boiler, commercial warm air furnace, instantaneous water heater, storage water heater, or unfired hot water storage tank.

* * * * *

Energy conservation standard means any standards meeting the definitions of that term in 42 U.S.C. 6291(6) and 42 U.S.C. 6311(18) as well as any other water conservation standards and design requirements found in this part or parts 430 or 431.

* * * * *

Flue loss means the sum of the sensible heat and latent heat above room temperature of the flue gases leaving the appliance.

* * * * *

Industrial equipment means an article of equipment, regardless of whether it is in fact distributed in commerce for industrial or commercial use, of a type which:

(1) In operation consumes, or is designed to consume energy;

(2) To any significant extent, is distributed in commerce for industrial or commercial use; and

(3) Is not a "covered product" as defined in Section 321(2) of EPCA, 42 U.S.C. 6291(2), other than a component of a covered product with respect to which there is in effect a determination under Section 341(c) of EPCA, 42 U.S.C. 6312(c).

* * * * *

Private labeler means, with respect to a commercial HVAC & WH product, an owner of a brand or trademark on the label of a product which bears a private label. A commercial HVAC & WH product bears a private label if:

(1) Such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product;

(2) The person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled; and

(3) The brand or trademark of a manufacturer of such product does not appear on such label.

* * * * *

■ 13. In § 431.62 revise the definition of "Basic model" to read as follows:

§ 431.62 Definitions concerning commercial refrigerators, freezers and refrigerator-freezers.

* * * * *

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

§ 431.65 [Removed]

■ 14. Section 431.65 is removed.

■ 15. In § 431.72 add in alphabetical order the definition of "Basic model" to read as follows:

§ 431.72 Definitions concerning commercial warm air furnaces.

* * * * *

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

■ 16. In § 431.82 add in alphabetical order the definition of "Basic model" to read as follows:

§ 431.82 Definitions commercial packaged boilers.

* * * * *

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

■ 17. In § 431.92 add in alphabetical order the definition of "Basic model" to read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

■ 18. In § 431.102 add in alphabetical order the definition of "Basic model" to read as follows:

§ 431.102 Definitions concerning commercial water heaters, hot water supply boilers, and unfired hot water storage tanks.

* * * * *

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

■ 19. In § 431.132 revise the definition of "Basic model" to read as follows:

§ 431.132 Definitions concerning automatic commercial ice makers.

* * * * *

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

§ 431.135 [Removed]

■ 20. Section 431.135 is removed.

■ 21. In § 431.152 add the definition of "Basic model" in alphabetical order to read as follows:

§ 431.152 Definitions concerning commercial clothes washers.

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

Subpart J [Removed and Reserved]

■ 22. Remove and reserve Subpart J of Part 431, consisting of §§ 431.171 through 431.176.

§§ 431.197 and 431.198 [Removed]

■ 23. Sections 431.197 and 431.198 are removed.

Appendix B to Subpart K of Part 431 [Removed]

■ 23a. Appendix B to subpart K of part 431 is removed.

■ 24. In § 431.202 revise the definition of "Basic model" to read as follows:

§ 431.202 Definitions concerning illuminated exit signs.

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

§ 431.205 [Removed]

■ 25. Section 431.205 is removed.

■ 26. In § 431.222 revise the definition of "Basic model" to read as follows:

§ 431.222 Definitions concerning traffic signal modules and pedestrian modules.

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

§ 431.225 [Removed]

■ 27. Section 431.225 is removed.

■ 28. In § 431.242 add in alphabetical order the definition of "Basic model" to read as follows:

§ 431.242 Definitions concerning unit heaters.

* * * * *

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

■ 29. In § 431.262 revise the definition of "Basic model" to read as follows:

§ 431.262 Definitions concerning commercial prerinse spray valves.

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

§ 431.265 [Removed]

■ 30. Section 431.265 is removed.

■ 31. In § 431.292 revise the definition of "Basic model" to read as follows:

§ 431.292 Definitions concerning refrigerated bottled or canned beverage vending machines.

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

* * * * *

§ 431.295 [Removed]

■ 32. Section 431.295 is removed.

■ 33. In § 431.302 add the definitions of "Basic model" and "manufacturer of walk-in cooler or walk-in freezer" in alphabetical order to read as follows:

§ 431.302 Definitions concerning walk-in coolers and walk-in freezers.

Basic model means all components of a given type of walk-in cooler or walk-in freezer (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency; and

(1) With respect to panels, which do not have any differing features or characteristics that affect U-factor.

(2) [Reserved]

Manufacturer of a walk-in cooler or walk-in freezer means any person who:

(1) Manufactures a component of a walk-in cooler or walk-in freezer that affects energy consumption, including, but not limited to, refrigeration, doors, lights, windows, or walls; or

(2) Manufactures or assembles the complete walk-in cooler or walk-in freezer.

* * * * *

■ 34. In § 431.322 revise the definition of "Basic model" to read as follows:

§ 431.322 Definitions concerning metal halide lamp ballasts and fixtures.

* * * * *

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency, and are rated to operate a given lamp type and wattage.

* * * * *

§ 431.325 [Removed]

■ 35. Section 431.325 is removed.

§§ 431.327 through 431.329 [Removed]

■ 36. Remove §§ 431.327 through 431.329.

Appendices A Through C to Subpart S of Part 431 [Removed]

■ 37. Remove Appendices A through C to subpart S of part 431.

Subpart T [Removed]

■ 38. Remove Subpart T to part 431, consisting of §§ 431.370 through 431.373, and Appendices A through D to subpart T of part 431 is removed.

■ 39. Revise the heading to Subpart U to read as follows:

Subpart U—Enforcement for Electric Motors

* * * * *

■ 40. Revise § 431.381 to read as follows:

§ 431.381 Purpose and scope for electric motors.

This subpart describes violations of EPCA's energy conservation requirements, specific procedures we will follow in pursuing alleged non-compliance of an electric motor with an applicable energy conservation standard or labeling requirement, and general procedures for enforcement action, largely drawn directly from EPCA, that apply to electric motors.

■ 41. In § 431.401 revise paragraph (b)(1) introductory text to read as follows:

§ 431.401 Petitions for waiver, and applications for interim waiver, of test procedure.

* * * * *

(b) *Submission, content, and publication.* (1) A Petition for Waiver shall be submitted either electronically to *AS_Waiver_Requests@ee.doe.gov* or by mail, in triplicate, to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue, SW., Mailstop EE–2J, Washington, DC 20585–0121. Each Petition for Waiver shall:

* * * * *

■ 42. Revise § 431.403 to read as follows:

§ 431.403 Maintenance of records for electric motors.

(a) Manufacturers of electric motors must establish, maintain and retain records of the following:

(1) The test data for all testing conducted pursuant to this part;

(2) The development, substantiation, application, and subsequent verification of any AEDM used under this part;

(3) Any written certification received from a certification program, including a certificate or conformity, relied on under the provisions of this part;

(b) You must organize such records and index them so that they are readily accessible for review. The records must include the supporting test data associated with tests performed on any test units to satisfy the requirements of this part (except tests performed by DOE).

(c) For each basic model, you must retain all such records for a period of two years from the date that production of all units of that basic model has ceased. You must retain records in a form allowing ready access to DOE, upon request.

■ 43. Revise § 431.404 to read as follows:

§ 431.404 Imported electric motors.

(a) Under sections 331 and 345 of the Act, any person importing an electric motor into the United States must comply with the provisions of the Act and of this part, and is subject to the remedies of this part.

(b) Any electric motor offered for importation in violation of the Act and of this part will be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such electric motor upon such terms and conditions (including the furnishing of a bond) as may appear to the Secretary of the Treasury appropriate to ensure that such electric motor will not violate the Act and this part, or will be exported or abandoned to the United States.

■ 44. Revise § 431.405 to read as follows:

§ 431.405 Exported electric motors.

Under Sections 330 and 345 of the Act, this Part does not apply to any electric motor if:

(a) Such electric motor is manufactured, sold, or held for sale for export from the United States (or such electric motor was imported for export), unless such electric motor is, in fact, distributed in commerce for use in the United States; and,

(b) Such electric motor, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such electric motor is intended for export.

■ 45. Revise § 431.406 to read as follows:

§ 431.406 Subpoena—Electric Motors.

Pursuant to sections 329(a) and 345 of the Act, for purposes of carrying out this part, the Secretary or the Secretary's designee, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer the oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served upon any persons subject to this part, the Secretary may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as a contempt thereof.

■ 46. Revise § 431.407 to read as follows:

§ 431.407 Confidentiality—Electric Motors.

Pursuant to the provisions of 10 CFR 1004.11, any manufacturer or private labeler of electric motors submitting information or data which they believe to be confidential and exempt from public disclosure should submit one complete copy, and 15 copies from which the information believed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, the Department shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

[FR Doc. 2011–3146 Filed 3–4–11; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 76 Monday,

No. 44 March 7, 2011

Part III

Department of Defense

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Tank Automotive Research, Development and Engineering Center (TARDEC); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Tank Automotive Research, Development and Engineering Center (TARDEC)

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy) (DUSD (CPP)), DoD.

ACTION: Notice.

SUMMARY: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103–337, (10 U.S.C. 2358 note), as amended by section 1109 of NDAA for FY 2000, Public Law 106–65, and section 1114 of NDAA for FY 2001, Public Law 106–398, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLs). The above-cited legislation authorizes DoD to conduct demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, designates additional DoD laboratories as STRLs for the purpose of designing and implementing personnel management demonstration projects for conversion of employees from the personnel system which applied on October 28, 2009. The TARDEC is listed in subsection 1105(a) of NDAA for FY 2010 as one of the newly designated STRLs.

DATES: Implementation of this demonstration project will begin no earlier than March 9, 2010.

FOR FURTHER INFORMATION CONTACT:

TARDEC: U.S. Army Tank Automotive Research, Development and Engineering Center (TARDEC), 6501 East 11 Mile Road, Warren, MI 48397–5000, ATTN: RDTA–COS/MS 204 Mr. Gregory L. Berry, Warren, MI 48397–5000.

DoD: Ms. Betty Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, many studies of DoD laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. These projects are "generally similar in nature" to the Department of Navy's "China Lake" Personnel Demonstration Project. The terminology, "generally similar in nature," does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

This demonstration project involves: (1) Two appointment authorities (permanent and modified term); (2) extended probationary period for newly hired engineering and science employees; (3) pay banding; (4) streamlined delegated examining; (5) modified reduction-in-force (RIF) procedures; (6) simplified job classification; (7) the Contribution-based Compensation and Appraisal System (CCAS); (8) academic degree and certificate training; (9) sabbaticals; (10) a Voluntary Emeritus Corps; (11) direct hire authority for candidates with advanced degrees for scientific and engineering positions; and (12) Distinguished Scholastic Achievement Appointment Authority.

2. Overview

The NDAA for FY 2010 not only designated new STRLs but also repealed the National Security Personnel System (NSPS) mandating conversion of NSPS covered employees to their former personnel system or one that would have applied absent the NSPS. A number of TARDEC employees are covered by the NSPS and must be converted to another personnel system. Section 1105 of NDAA for FY 2010 stipulates the STRLs designated in subsection (a) of section 1105 may not implement any personnel system, other than a personnel system under an appropriate demonstration project as defined in section 342(b) of Public Law 103–337, as amended, without prior congressional authorization. In addition, any conversion under the provisions of section 1105 shall not adversely affect any employee with respect to pay or any other term or condition of employment; shall be consistent with section 4703(f) of title 5 United States Code (U.S.C.); and shall be completed within 18 months after enactment of NDAA for FY 2010. Therefore, since TARDEC is both designated an STRL by section 1105 of NDAA for FY 2010 and has NSPS covered employees, it must convert, at a minimum, its NSPS covered employees to a personnel management demonstration project before the end of April 2011.

On September 9, 2010, DoD published the proposed STRL Demonstration Project for TARDEC in 75 FR 55109–55157. During the public comment period ending October 12, 2010, DoD received comments from five individuals. All comments were carefully considered. The following summary addresses all the comments received, provides responses, and note resultant changes to the original project plan in the first **Federal Register** notice. Most commenters addressed several topics, which were counted separately. A total of 39 comments were received from the five commenters. The following summary addresses all comments received, provides responses, and notes resultant changes to the original project plan in the first **Federal Register** notice.

A. General Overview of Comments

None of the comments received gave an overall opinion supporting or not supporting the demonstration project. The comments received are categorized as desiring further clarification or offering constructive recommendations on improving the details of the demonstration project. Generally, the comments were very helpful in pointing out areas that needed refinement or correction and were directed to a specific topic. In order to maintain the greatest flexibilities additional detailed instructions will be contained in the TAREC Demonstration Project Internal Operating Instructions.

B. Personnel Management Board

One (1) comment was received under this section.

Comment: What does "ensure in-house budget discipline" mean? Is this the "Control Gates" or "Swim Lanes" as TARDEC currently calls it under acquisition demonstration where maximum pay in a given band is being limited to less than the band allows and what the position is advertised to encompass?

Response: The TARDEC Personnel Management Board has the responsibility to ensure that expenses associated with the demonstration project are maintained within proper funding levels. The use of "control gates" for the demonstration project, if used, will be contained in the Demonstration Project Operating Instructions. No changes were made as a result of this comment.

C. Pay Banding

One (1) comment was received under this section.

Comment: Within the Engineering and Science DB pay band at the II level, it is identified as a developmental track covering GS–5, step 1, through GS–11, step 10. TARDEC has Chemists whose full performance grade (GS–9/11) falls in this band. As written, this is misleading as it implies that these people are in a developmental position when in fact they are not.

Response: Concur with comment. The DB Pay Band Level II covers positions that may be either developmental in nature or at the full performance level. **Federal Register** notice Section III.A.1.b is modified to read: "Band II is developmental/full performance track covering GS–5, step 1, through GS–11, step 10.

D. Classification

One (1) comment was received under this section.

Comment: The **Federal Register** notice does not talk about how supervisory and/or team leader positions will be determined from the standpoint of meeting some type of established criteria. Recommend a review of the language with the possibility of adding that Office of Personnel Management (OPM) Functional Classification Standards could be used to form applicability determinations for positions.

Response: Concur with the comment. The OPM Functional Classification Standards such as the General Schedule Team Leader Guide, General Schedule Supervisory Guide, Research Grade Evaluation Guide, Equipment Development Grade Evaluation Guide, *etc.,* will be used as foundation guides in making proper classification applicability determinations. **Federal Register** notice Section III.B.2 is modified to read: "Current OPM functional classification standards may be used to aid in position applicability and the framework for pay band level determinations."

E. Contribution-Based Compensation and Appraisal System (CCAS)

A total of eleven (11) comments were received under this category relating to four subtopics as follows:

1. Pay Pools

Comments: Two similar comments addressed the guidelines for sizing of pay pools and that in the past TARDEC had exceeded the size guidelines for pay pools under the DoD Civilian Acquisition Workforce Personnel Demonstration Project. Does TARDEC intend to continue having a single pay pool with upwards of 700 employees in it?

Response: It is projected that the makeup of demonstration project pay pools will typically be constructed within normal pay pool size guidelines. However, to provide additional flexibility, some specific language in Section III.C.3. Pay Pools was deleted with the actual construct of pay pools to be further defined in the Demonstration Project Internal Operating Instructions.

Comment: One comment addressed whether it will be a requirement that supervisory personnel be in a separate pay pool from non-supervisory personnel.

Response: To maintain flexibility the construct of pay pools will be further defined in the Demonstration Project Internal Operating Instructions. **Federal Register** notice Section III.C.3 was modified to delete the sentence: "Supervisory personnel typically will be placed in a pay pool separate from subordinate non-supervisory personnel."

Comment: One comment addressed the amount of the performance payouts; whether they are based on an established pay calculation such as the DoD Civilian Acquisition Workforce Personnel Demonstration Project's CAS2NET system; and if the formulas will be made available.

Response: The final decision for the amounts given for performance pay outs rests with the TARDEC Director with a recommendation by a Pay Pool Manager. While an automated tool may perform generalized calculations, the amounts to be given for continuing pay increases and bonus awards are the Pay Pool Manager's determination. No changes in the **Federal Register** notice have been made in response to this comment.

Comment: One comment addressed the funding levels and the fact that TARDEC has a number of employees that are co-located with other offices such as Program Executive Offices which complicates the pay pool funding situation since these offices may fund at different levels.

Response: The decisions on funding levels for the Demonstration Project are at the sole discretion of the TARDEC Director with recommendations provided by the TARDEC Personnel Management Board. Consultation with other organizations is desirable, but will not be required by the Demonstration Project. No changes in the **Federal Register** notice have been made in response to this comment.

2. Annual Rating Cycle and Rating Process

Comment: One comment addressed that all Overall Contribution Scores (OCS) will be rounded up to the nearest whole number. For clarification purposes, an OCS of 70.1 would be rounded up to 71. Is that correct?

Response: This comment has been carefully considered; and it is agreed that it needs clarification. **Federal Register** notice Section III.C.4 is modified to read: "All OCS's will be rounded to the nearest whole number."

Comment: One comment addressed when the expected OCS for an individual would be established and set for the appraisal year in order for the employee to perform throughout the year to a level associated with the expected OCS.

Response: The expected OCS is directly tied to an employee's base pay. Therefore, it is the base pay the employee has at the end of the rating cycle that will determine the final expected OCS. This does not preclude the employee and the rating official from discussing performance at the beginning and mid-point of the rating cycle. The demonstration project encourages employees and supervisors to actively participate in on-going performance discussions. The demonstration project has established six performance factors with each factor having multiple levels of increasing contribution corresponding to the pay band levels; this will allow meaningful discussions without the final expected OCS being determined until the end of the rating cycle. No changes in the **Federal Register** notice have been made in response to this comment.

Comment: One comment addressed Table 4 with respect to the OCS point ranges for the Business and Technical (DE) Occupational Family. It was suggested the table may need further review and refinement to allow for the possibility of higher scores.

Response: This comment was carefully considered. It was agreed that Table 4 needs to be modified to revise the point ranges of the Business and Technical (DE) occupational family. This will allow for and maintain proper growth potential within this occupational family. **Federal Register** notice Table 4 was modified accordingly.

3. Base Pay Increases and Bonuses

Comment: One comment pointed out that base pay increases may be limited and that base pay is capped when an employee reaches the maximum rate of base pay in an assigned pay band. The

commenter asked if these are one in the same or if they refer to "control gates." Compensation should not be limited to something lower than what the pay band allows, otherwise a return to General Schedule may be appropriate.

Response: The demonstration project gives final authority to the TARDEC Director in the distribution of the amount of individual pay increases and bonuses as recommended by a Pay Pool Manager. No changes in the **Federal Register** notice have been made in response to this comment.

4. Awards

Comment: One commenter requested clarification as to whether the $25,000 ceiling applies only to group awards or if it may also apply to individual awards.

Response: The delegation of awards authority is an internal Army decision and will be considered as such.

Comment: One commenter recommended expanding the TARDEC Director's awards authority to provide final approval authority for two Army civilian honorary achievement medals.

Response: The delegation of awards authority is an internal Army decision and will be considered as such.

F. Hiring Authority

A total of nine comments were received under this category relating to five subtopics as follows:

1. Delegated Examining

Comment: In regard to rating and ranking being required only when the number of qualified candidates exceed 15 or there is a mix of preference and non-preference applicants, one commenter wanted to know who determines the number of qualified candidates. The question was posed as to whether this was left to the selecting official as the commenter wanted to make sure the integrity of the qualified determinations were maintained under the demonstration project.

Response: The servicing Civilian Personnel Advisory Center will determine the number of qualified candidates based on the number of applications received and the number of applicants determined to fully meet the prescribed OPM qualification standards. This is a function of the servicing Civilian Personnel Advisory Center and not the selecting official. No changes in the **Federal Register** notice have been made in response to this comment.

Comment: One comment addressed that there was no mention of positions covered by the Administrative Careers With America (ACWA) at the proposed Business and Technical Lab Demo Pay Band DE–II, GS–5 through GS–11 level equivalent. Since the demonstration project will recruit at the lowest GS equivalent of the band, so the DE–II positions would be recruited at the GS–5 equivalent, and many, if not all, positions in that occupational family would be covered by ACWA, therefore they recommended that we modified our language to include the use of the OPM ACWA Assessment Tool for these positions.

Response: This comment has been carefully reviewed resulting in the addition of the following clarifying information to the **Federal Register** notice Section III.D.2: "The Demonstration Project will utilize the current OPM Administrative Careers With America (ACWA) or successor procedures for occupational series which have been designated as having a testing requirement. This will allow for the recruitment of positions covered by the Business and Technical Occupational Family at the DE–II pay band level."

Comment: One comment recommended identifying an upper and lower level within the DE–II pay band for recruitment purposes only in order to qualify candidates at the higher level of the pay band say at the GS–9 level. They recognized that many positions require work at the full performance level (GS–9/11 equivalent), which cannot be met with the standard as written. Plus they said many positions within the laboratory are covered under the Luevano Decree, and must meet the ACWA requirements if recruited using GS–5 Level standards.

Response: This comment has been carefully considered. While adding an upper and lower qualifications determination within a pay band may appear to be desirable, we have retained our DE–II pay band structure and the minimum qualification requirements. Selective placement factors may still be used to distinguish higher level experience, skills, competencies. No changes in the **Federal Register** notice have been made in response to this comment.

Comment: One comment recommended modification to say that if delegated examining authority has been granted for the GS equivalent position, that delegated examining authority also applies to positions covered under this demonstration project. Absent this language, additional delegated authority must be requested from OPM to fill positions covered by this project.

Response: This comment has been carefully considered. It was concluded that the current language in Section D. II covers projected authorities. No changes in the **Federal Register** notice have been made in response to this comment.

2. Distinguished Scholastic Achievement Appointment

Comment: One comment recommended the needed flexibility to make "on the spot" appointments at job fairs, college visits, *etc.,* and that a public announcement should not be required for this hiring authority.

Response: This comment has been carefully considered. While the notion of making "on the spot" appointments is highly desirable, no changes in the **Federal Register** notice have been made in response to this comment.

Comment: One comment addressed the current labor market conditions being extremely competitive with industry and academia for the small supply of highly-qualified and security clearable candidates with Masters Degrees or Ph.D.'s. in science or engineering. This might have been the case four years ago, but not today in southeast Michigan. If TARDEC believes this, why have people been told TARDEC doesn't participate in the tuition reimbursement program since we don't have trouble finding and keeping qualified people?

Response: The Distinguished Scholastic Achievement Appointment authority coupled with the **Federal Register** notice language in Section III.G.1.b, Critical Skills Training (Training for Degrees) provides enough flexibility for the ever changing labor markets. No changes in the **Federal Register** notice have been made in response to this comment.

3. Initial Probationary Period

Comment: One commenter recommended changing the language in this section to clarify authority of the TARDEC Director with respect to extending the three-year probationary period and to customizing the probationary period.

Response: The initial probationary period will not exceed three years for all newly hired employees. The TARDEC Director cannot extend this period of time but may limit it. To maintain flexibility, the construct of Initial Probationary Periods will be further defined in the Demonstration Project Internal Operating Instructions. No changes in the **Federal Register** notice have been made in response to this comment.

4. Supervisory Probationary Periods

Comment. One comment was received recommending that an existing supervisor should only be subject to an

additional one-year probationary period if the change of assignment was initiated/requested by the employee.

Response: This comment has been carefully considered. The determination as to when a new supervisory probationary period is to be applicable will be a management decision and not initiated by an employee's request. No change in the **Federal Register** notice have been made in response to this comment.

5. Voluntary Emeritus Corps

Comment: One comment was received recommending deleting the sentences that state that voluntary emeritus assignments are not considered employee assignments and replace with, Voluntary Emeritus Corps service is gratuitous if the intent is to extend the Voluntary Emeritus individuals additional benefits of employees, such as the ability to go TDY and represent the government in non-contractual matters.

Response: This comment has been carefully considered. The intent of this new authority is to develop a mechanism to allow retired or separated employees to volunteer their services. They are not taking the place of government workers. To maintain consistency Section III.D.k, m, and n are modified to remove the word "employee" and replace with the word "volunteer."

G. Internal Placement

A total of two comments were received under this category relating to two subtopics as follows:

1. Promotion

Comment: One comment identified that promotion actions may not result in an increase in employees' base pay since there is an overlap of salaries in different pay bands. The recommendation was to delete the sentence: "The move from one band to another must result in an increase in the employee's base pay to be considered a promotion."

Response: This comment has been carefully reviewed. It is agreed that the identified sentence should be deleted. The following sentence is deleted from the **Federal Register** notice Section III.E.1: "The move from one band to another must result in an increase in the employee's base pay to be considered a promotion." Since base pay dollars can overlap, the movement from a lower pay band to a higher pay band (*e.g.,* DE–III to DE–IV) using the word "must" was incorrect.

2. Reassignment

Comment: One comment recommended all of Section III.(E)(6) beyond the first paragraph be moved to the pay setting Section III.F.6.

Response: The current sections are considered to be in a proper placement within the **Federal Register** notice. No changes in the **Federal Register** notice have been made in response to this comment.

H. Pay Administration

A total of four comments were received under this category relating to four subtopics as follows:

1. Pay and Compensation Ceilings

Comment: One comment mentioned base pay will be limited to the maximum base pay payable for each band. The commenter wanted to know if "control gates" are being eliminated under the demonstration project.

Response: The use of "control gates," for the demonstration project, if used, will be described in the Demonstration Project Internal Operating Instructions. No changes in the **Federal Register** notice have been made in response to this comment.

2. Pay Setting for Appointment

Comment: One comment contained the recommendation that the Pay Setting for Appointments section be modified to specifically state that pay setting for initial entrance into the demonstration project from another personnel system is considered the same as an initial appointment.

Response: This comment has been carefully considered. It has been determined the current language provides the necessary flexibilities. No changes in the **Federal Register** notice have been made in response to this comment.

3. Pay Setting for Promotion

Comment: One comment contained the recommendation that the $10,000 limit on promotions be replaced by a percentage of base pay to create a system that can adapt as the General Schedule salary tables change. Over time, a fixed $10,000 amount will constitute a smaller and smaller percentage of base pay.

Response: The following sentence has been deleted from the **Federal Register** notice, Section III.F.5: "The maximum amount of a base pay increase for a promotion will not exceed $10,000, or other such amounts as established by the Personnel Management Board." This sentence had an unintended limiting effect.

4. Supervisory and Team Leader Pay Differentials

Comment: One comment requested clarification on whether a supervisory/leader is eligible for a supervisory/leader pay adjustment and a supervisory/leader differential, or if the supervisor/leader is ineligible for one if another is received.

Response: Additional guidance on the Supervisory and Team Leader Pay Adjustments will be contained in the Demonstration Project Internal Operating Instructions. No changes in the **Federal Register** notice have been made in response to this comment.

I. Employee Development

One (1) comment was received under this section.

Comment: A commenter requested clarification on how the service obligation period will be computed. Will one academic year of training (30 semester hours or equivalent) require one year of service, or will the service obligation be computed based on actual classroom hours, which is a much shorter period of time?

Response: Additional guidance on critical skills training obligations will be contained in the Demonstration Project Internal Operating Instructions. No changes in the **Federal Register** notice have been made in response to this comment.

J. Reduction-In-Force

A total of four comments were received under this category relating to three subtopics as follows:

1. Retention Standing for Modified Term Appointments

Comment: Two comments requested clarification of the retention standing for employees on either a modified term appointment or a temporary appointment. Normally these two categories of appointments are not listed in Tenure Group. Both commenters suggested a review of Tenure Group determinations with a recommendation that both groups be identified as Tenure Group 0, and, therefore, not eligible to compete within a Reduction-In-Force (RIF).

Response: This suggestion has been fully reviewed; and it is agreed that employees in these two appointment groups should not receive Tenure Group III status for RIF purposes. The following sentence is deleted from the **Federal Register** notice Section III. H: "Modified term appointment and temporary employees are in tenure group III for RIF for purposes." The following sentence is added to Section III.H: "Modified term appointment and

temporary employees are in Tenure Group 0 and are not eligible to compete in a RIF."

2. RIF Service Credit for Performance

Comment: One comment addressed the use of seven and four years with specific percentage of service credit based upon the OCS. A recommendation was provided for a review to determine if the seven and four years could be replaced with a mechanism by which 20, 16, and 12 years of additional RIF service credit could be used relating to the OCS similar to the traditional RIF procedures.

Response: After a careful review, there is agreement that additional RIF service credit for performance would be better defined using a three tiered credit system relating to the traditional format found in most General Schedule procedures. The last three OCS scores will still be used plus a percentage of the expected OCS. **Federal Register** notice Sections III.H.a and b are removed and replaced with the following: "a. 20 years of credit for each year the OCS is equal to or greater than 94 percent of the expected OCS. b. 16 years of credit for each year the OCS is less than 94 percent but greater than 92 percent of the expected OCS. c. 12 years of credit for each year the OCS is less than 92 percent but greater than 90 percent of the expected OCS. d. Zero (0) years of credit for each year the employee's OCS is less than 90 percent of the expected 0CS."

3. Contribution Improvement Plan Assignment Rights

Comment: One comment called attention to granting assignment rights to any employee currently serving on a Contribution Improvement Plan (CIP) for RIF purposes and suggested it was not in the interest of the mission to place a nonperforming employee in a different position that has been identified as critical in a period of downsizing.

Response: The **Federal Register** notice language contained in Section III. H. has been reconsidered; and it has been concluded it appropriately addresses assignment rights for employees on a CIP. No changes in the **Federal Register** notice have been made in response to this comment.

K. Conversion From NSPS to the Demonstration Project

One (1) comment was received under this section.

Comment: A commenter recommended providing additional details addressing when and why conversions from NSPS to Lab Demo may not be at the current NSPS bands.

Response: The current **Federal Register** notice language contained in Section V.A.b. sets forth a conversion procedure that best fits the applicability of the TARDEC conversion situation. No changes have been made as a result of this comment.

L. Conversion From a Non-NSPS System to the Demonstration Project

Two (2) comments were received under this section.

Comment: One comment drew attention to the provision that employees who are on retained grade would not receive prorated Within Grade Increases if they are on a retained rate. Absent conversion to the demonstration project these employees would continue to receive Within Grade Increases for the duration of the period of retained grade as if they were never demoted.

Response: This comment has been carefully considered. General Schedule (GS) employees on retained Grade at the time of conversion into Lab Demo Project will be afforded the prorated Within-Grade Increase equity provisions as outlined in Section V.B. No changes in the **Federal Register** notice have been made in response to this comment.

Comment: One comment recommended deleting the sentence: "Employees who enter the demonstration project from other pay systems (DCIPS, ACQ Demo, or other STRLs) after initial implementation by lateral transfer, promotion, reassignment, reduction in band, or realignment will be subject to the pay rules that govern conversion out of their respective systems." The commenter believes that it limits the ability to set pay in the lab demo.

Response: This comment has been carefully considered. This sentence refers to the losing activity providing pay equivalencies for use by the Lab Demo in setting pay under Lab Demo rules. Employees are placed into the Lab Demo using the Lab Demo pay setting provisions. No changes in the **Federal Register** notice have been made in response to this comment.

M. Conversion Out of the Demonstration Project

One (1) comment was received under this section.

Comment: This comment recommended deletion of the sentence, "For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the demonstration project (before any other action)." This sentence assumes that the lateral action is determined prior to identification of the conversion grade. In place of this sentence, recommend rewording the following sentence to include reassignment as well as promotion, transfers, *etc.* The conversion grade must first be identified in order to determine if the subsequent action is a promotion, reassignment or downgrade.

Response: This comment has been carefully considered. The detailed information contained in this sentence helps the receiving/gaining Human Resource Office to better understand how the Lab Demo system works. No changes in the **Federal Register** notice have been made in response to this comment.

N. Demonstration Project Costs

One (1) comment was received under this section.

Comment: It was recommended a review of the Design and Transition to NSPS expenses also be documented in addition to the three categories already identified in the **Federal Register** notice for Fiscal Years 2010 and 2011 in order to properly account for the actual and projected expenses made in conjunction of with the demonstration project.

Response: Table 9—Projected Development Costs has been modified to include related NSPS expenses. A line to cover Design and Transition from NSPS expenditures for FY 10 and FY 11 was added, plus the projected expenditures for the remaining categories were updated.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this **Federal Register** notice shall be available for use by the STRLs previously enumerated in section 9902(c)(2) of title 5, United States Code, which are now redesignated in section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, if they wish to adopt them in accordance with DoD Instruction 1400.37; pages 73248 to 73252 of volume 73, **Federal Register**; and after the fulfilling of any collective bargaining obligations.

Dated: March 1, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Office, Department of Defense.

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I. Executive Summary

TARDEC is a subordinate organization of the U.S. Army Research, Development and Engineering Command (RDECOM). TARDEC is the U.S. Army's Ground Vehicle Center of Excellence and the ground systems integration domain owner for RDECOM. TARDEC provides engineering and scientific expertise for DoD manned and unmanned ground systems and ground support systems. It is the Nation's laboratory for advanced military automotive technology and the Army's lead for advanced science and technology research, demonstration, development, and full Life Cycle engineering for ground vehicle electronics and architecture, power and mobility, intelligent ground systems, maneuver support and sustainment, and survivability.

At TARDEC, the top priority is to deliver the most advanced technology solutions to improve the Nation's ground vehicle fleet. To do this effectively requires more than just hard work and dedication. It takes leadership, vision, and the determination to execute that vision. To be truly successful, the workforce needs to be able to lead, innovate, integrate, and deliver.

To achieve this goal, TARDEC must be able to hire, retain, and continually motivate enthusiastic, innovative, and highly-educated scientists and engineers, supported by accomplished business management and administrative professionals as well as a skilled administrative and technical support staff.

The goal of the project is to enhance the quality and professionalism of the TARDEC workforce through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the TARDEC mission, adjust the workforce for change, and improve workforce satisfaction. The TARDEC proposed demonstration project is similar to the Department of Defense Civilian Acquisition Workforce Personnel Demonstration Project, commonly known as the "Acq Demo." TARDEC has been using the Acq Demo's Contribution-Based Compensation and Appraisal System (CCAS) and its pay banding structure for a number of years. The TARDEC Project also uses concepts from the U.S. Army Communications-Electronics Research, Development and Engineering Center (CERDEC) demonstration project and the Naval Research Laboratory demonstration project. The results of the project will be evaluated within five years of implementation.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. Federal laboratories need more efficient, cost-effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, or extended to individuals or groups of employees not included in the project plan, without the approval of the ODUSD(CPP). The provisions of DoDI 1400.37 are to be followed for any modifications, adoptions, or changes to this demonstration project plan.

B. Problems With the Present System

TARDEC has participated in a number of personnel systems and personnel demonstrations over the past 25 years. These include the current Civil Service General Schedule (GS) system, the Acq Demo Project, and the NSPS. In October 2009, as part of the NDAA for FY 2010, TARDEC was designated as a STRL for the purpose of designing and implementing a personnel management demonstration project for conversion of employees from the personnel system(s) which applied to them on October 28, 2009. TARDEC's experience with each of these prior personnel systems was that, although each had positive features, each also had negative aspects. As a result of TARDEC's experience, it was determined that certain features from the earlier systems were worthwhile to carry forward and any shortcomings/limitations corrected or alleviated.

The current GS system has existed in essentially the same form since 1949. Work is classified into one of fifteen overlapping pay ranges that correspond with the fifteen grades. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act in 1980 has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation, and geographic location.

The need to change the current hiring system is essential as TARDEC must be able to recruit and retain scientific, engineering, acquisition support and other professionals, and skilled

technicians. TARDEC must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees and be in compliance with public law.

Finally, current limitations on training, retraining and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions and emerging technologies.

TARDEC's proposed personnel management demonstration project, by building on previous strengths and addressing shortcomings, is intended to provide the highest potential for movement to a single system that will meet the needs of TARDEC and all its employees.

C. Changes Required/Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy's "China Lake" and the National Institute of Standards and Technology (NIST) demonstration projects have produced impressive statistics on increased job satisfaction and quality of work versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the TARDEC workforce will facilitate increased:

1. Quality in the workforce and resultant products;
2. Timeliness of key personnel processes;
3. Retention of "excellent performers;"
4. Success in recruitment of personnel with critical skills;
5. Management authority and accountability;
6. Satisfaction of customers; and
7. Workforce satisfaction with the personnel management system.

An evaluation model was developed for the Director, Defense, Research and Engineering (DDR&E) in conjunction with STRL service representatives and the Office of Personnel Management (OPM). The model will measure the effectiveness of this demonstration project and will be used to measure the results of specific personnel system changes.

D. Participating Organizations

TARDEC is comprised of employees located at the main site in Warren, MI, with others geographically dispersed at the locations shown in Appendix A. TARDEC has employees matrixed to Program Executive Office Combat Support and Combat Service Support; Program Executive Office Ground Combat Systems; Program Executive Office Integration; and Tank Automotive Command (TACOM) Life Cycle Management Command (LCMC) Joint Project Office. Successor organizations will continue coverage in the demonstration project.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 1,427 TARDEC civilian employees under title 5, U.S.C. in the occupations listed in Appendix B. The project plan does not cover members of the Senior Executive Service (SES), Scientific and Professional (ST) employees, Federal Wage System (FWS) employees, employees covered by the Defense Civilian Intelligence Personnel System (DCIPS), Department of Army (DA) and Army Command centrally funded interns, or students employed under the Summer Hire Program.

Department of Army and Army Material Command centrally funded interns will not be converted to the demonstration project until they reach their full performance level. They will continue to be covered under the Total Army Performance Evaluation System (TAPES). The American Federation of Government Employees (AFGE) Local 1658 represents approximately 90% of TARDEC's professional and non-professional workforce.

To foster union acceptance of TARDEC's proposed personnel demonstration project, initial discussions with the Union officials began in December 2009. Negotiations will begin in earnest after publication of this **Federal Register** notice (FRN). TARDEC will continue to fulfill its obligation to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. 4703(f) and 7117, as applicable.

F. Project Design

In October 2009, section 1105 of NDAA for FY 2010 directed TARDEC to transition to a laboratory demonstration project. TARDEC senior leadership decided to move toward adopting many aspects of both the Acq Demo and the CERDEC laboratory personnel demonstration project as modified by this FRN. The Acq Demo project was approved in 1999 and the CERDEC project was approved in 2001. TARDEC hopes to benefit from using the best practices from these demonstration projects.

G. Personnel Management Board

1. TARDEC is creating a Personnel Management Board to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the board will be senior leaders appointed by the TARDEC Director. As needed, ad hoc members (such as labor counsel, human resource representatives, *etc.*) will serve as advisory members to the board.

2. The board will execute the following:

a. Determine the composition of the CCAS pay pools in accordance with the guidelines of this proposal and internal procedures;

b. Review operation of pay pools and provide guidance to pay pool managers;

c. Oversee disputes in pay pool issues;

d. Formulate and execute the civilian pay budget;

e. Manage the awards pools;

f. Determine hiring and promotion-based pay as well as exceptions to CCAS base pay increases;

g. Conduct classification review and oversight, monitor and adjust classification practices, and decide board classification issues;

h. Approve major changes in position structure;

i. Address issues associated with multiple pay systems during the demonstration project;

j. Establish contribution goals and other evaluation descriptors;

k. Assess the need for changes to demonstration project procedures and policies;

l. Review requests for Supervisory/Team Leader Base Pay Adjustments and provide recommendations to the appropriate Center Director;

m. Ensure in-house budget discipline;

n. Manage the number of employees by occupational family and pay band;

o. Develop policies and procedures for administering Developmental Opportunity Programs;

p. Ensure that all employees are treated in a fair and equitable manner in accordance with the policies, regulations and guidelines covering this demonstration project; and,

q. Monitor the evaluation of the project.

III. Personnel System Changes

A. Pay Banding

The design of the TARDEC pay banding system takes advantage of the many reviews performed by OPM, DoD, and DA. The design has the benefit of

being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector, to include those practiced by the Navy's "China Lake" experiment and NIST. The pay band system is designed to facilitate conversion, when and if appropriate, of GS, Acq Demo, and NSPS employees into the TARDEC demo.

1. Occupational Families, Career Paths, and Pay Band Levels

Occupations with similar characteristics will be grouped together into one of three occupational families with career paths and pay band levels designed to facilitate pay progression. These occupational families are Engineering and Science (E&S), Business and Technical (B&T), and General Support (GEN). Each occupational family's career path will be composed of pay bands corresponding to recognized advancement and career progression expected within the occupations. These career paths and their pay bands will not be the same for each occupational family. Each career path will be divided into three to five pay bands. Employees track into an occupational family based on their current OPM classification series as provided in Appendix B. The current occupations have been examined, and their characteristics and distribution have served as guidelines in the development of the following three occupational families:

Engineering and Science (E&S) (Pay Plan DB): This occupational family includes technical professional positions such as engineers, physicists, chemists, mathematicians, operations research analysts, and computer scientists. Specific course work or educational degrees are required for these occupations. Five pay bands have been established for the E&S occupational family:

a. Band I is a student trainee track covering GS–1, step 1, through GS–4, step 10.

b. Band II is a developmental/full performance level track covering GS–5, step 1, through GS–11, step 10.

c. Band III is a full-performance technical track covering GS–12, step 1, through GS–13, step 10. Some first-level supervisory positions may also be included in this band.

d. Band IV includes both senior technical positions along with supervisors-managers covering GS–14, step 1, through GS–15, step 10.

e. Band V provides the ability to accommodate science and engineering positions having duties and responsibilities that exceed the GS–15 classification criteria. The DoD is developing classification, compensation, and performance management policy, guidance, and implementation processes for this pay band level that will be published in a separate FRN. TARDEC will supplement this information through internal operating guidance.

Business & Technical (B&T) (Pay Plan DE): This occupational family includes such positions as program acquisition specialists, equipment specialists, engineering and electronics technicians, finance, accounting, administrative, and management analysts. Employees in these positions may or may not require specific course work or educational degrees. Four pay bands have been established for the B&T occupational family:

a. Band I is a student trainee track covering GS–1, step 1, through GS–4, step 10.

b. Band II is a developmental/full performance track covering GS–5, step 1, through GS–11, step 10.

c. Band III is a full performance track covering GS–12, step 1, through GS–13, step 10.

d. Band IV is a senior technical/manager track covering GS–14, step 1, through GS–15, step 10.

General Support (GEN) (Pay Plan DK): This occupational family is composed of positions for which specific course work or educational degrees are not required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. This family includes such positions as secretaries, office automation clerks, and budget/program/computer assistants. Three pay bands have been established for the GEN occupational family:

a. Band I includes entry-level positions covering GS–1, step 1, through GS–4, step 10.

b. Band II includes full-performance positions covering GS–5, step 1, through GS–7, step 10.

c. Band III includes senior technicians/assistants/secretaries covering GS–8, step 1, through GS–10, step 10.

2. Pay Band Design

The pay bands for the TARDEC Lab Demo occupational families and how they relate to the current GS framework are shown in Table 1.

TABLE 1—TARDEC LAB DEMO PAY BANDS WITH EQUIVALENT GS GRADES

Occupational family	Lab demo pay bands with equivalent GS grades				
	I	II	III	IV	V
DB, Engineering & Science	GS1–4	GS 5–11	GS 12–13	GS 14–15	> GS–15
DE, Business & Technical	GS 1–4	GS 5–11	GS–12–13	GS–14–15	
DK, General Support	GS 1–4	GS 5–7	GS 8–10		

The pay bands for the TARDEC Lab Demo occupational families and how they relate to the current Department of Defense Civilian Acquisition Workforce Personnel Demonstration Project framework are shown in Table 2.

TABLE 2—TARDEC LAB DEMO PAY BANDS WITH EQUIVALENT ACQ DEMO PAY BANDS

Occupational family	Lab demo pay bands with equivalent Acq demo pay bands				
	I	II	III	IV	V
DB, Engineering & Science	NH–I	NH–II	NH–III	NH–IV	
DE, Business & Technical	NH–I, NJ–I	NH–II, NJ–II, NJ–III	NH–III, NJ–IV	NH–IV	
DK, General Support	NK–I	NK–II	NK–III		

The pay bands for the TARDEC Lab Demo occupational families and how they relate to the NSPS conversion framework are shown in Table 3.

TABLE 3—TARDEC LAB DEMO PAY BANDS WITH EQUIVALENT NSPS PAY BANDS

Occupational family	Lab demo pay bands with equivalent NSPS pay bands*				
	I	II	III	IV	V
DB, E&S	YP–1	YD–1, YP–1	YD–2, YF–2	YD–3, YF–2, YF–3	
DE, Business & Technical.	YP–1, YB–1, YE–1	YA–1, YA–2, YB–1, YB–2, YB–3, YE–1, YE–2, YE–3, YP–1	YA–2, YB–3, YC–2, YE–3, YE–4	YA–3, YC–2, YC–3	
DK, General Support	YB–1, YE–1, YP–1	YB–1, YB–2, YE–1, YE–2, YP–1	YB–2, YE–2, YP–1		

*NSPS Pay Bands overlap Lab Demo bands and Occupational Families

3. Science and Engineering Positions Classified Above GS–15 (Pay Band V)

The career path pay banding plan for the E&S occupational family includes a pay band V to provide the ability to accommodate positions having duties and responsibilities that exceed the GS–15 classification criteria. This pay band is based on the Above GS–15 Position concept found in other STRL personnel management demonstration projects that was created to solve a critical classification problem. The STRLs have positions warranting classification above GS–15 because of their technical expertise requirements including inherent supervisory and managerial responsibilities. However, these positions are not considered to be appropriately classified as Scientific and Professional Positions (STs) because of the degree of supervision and level of managerial responsibilities. Neither are these positions appropriately classified as Senior Executive Service (SES) positions because of their requirement for advanced specialized scientific or engineering expertise and because the positions are not at the level of general managerial authority and impact required for an SES position.

The original Above GS–15 Position concept was to be tested for a five-year period. The number of trial positions was set at 40 with periodic reviews to determine appropriate position requirements. The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness; continued applicability to the current STRL scientific, engineering, and technology workforce needs; and appropriate allocation of billets based on mission requirements. The degree to which the laboratory plans to participate in this concept and develop classification, compensation, and performance management policy, guidance, and implementation processes will be based on the final outcome of the DoD evaluation (*see* Section III.A.1.e).

B. Classification

1. Occupational Series

The GS classification system has over 400 occupational series, which are divided into 23 occupational groupings. TARDEC currently has positions in approximately 65 occupational series that fall into approximately three occupational groupings. All positions listed in Appendix B will be in the classification structure. Provisions will be made for including other occupations in response to changing missions.

2. Classification Standards and Position Descriptions

TARDEC will use an automated classification system. The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM Functional Guides for Within White Collar Work will be used to aid in position classification suitability and form the framework for pay band level determinations. Current OPM position classification standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified pay band factor level descriptors for each pay band determination. The objective is to record the essential criteria for each pay band within each occupational family career path by stating the characteristics of the work, the responsibilities of the position, the competencies required, and the expected contributions. The pay band factor level descriptors will serve as both classification criteria and assessment criteria and may be found in Appendix C New position descriptions will replace the current position/job descriptions. The pay band factor level descriptors for each pay band will serve as an important component in the new position description, which will also include position-specific information, and provide data element information pertinent to the job. The computer-assisted process will produce information necessary for position descriptions. The new descriptions will be easier to prepare, minimize the amount of writing time, and make the position description a more useful and accurate tool for other personnel management functions.

Specialty work codes (narrative descriptions) may be used to further differentiate types of work and the competencies required for particular positions within an occupational family and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR part 551. All demonstration project positions are covered by the FLSA unless they meet the criteria for exemption. Classification Specialists will evaluate positions on a case-by-case basis comparing the duties and responsibilities assigned, the pay band factor level descriptors for each pay band level, and the FLSA criteria in accordance with 5 CFR part 551. Additionally, the advice and assistance of the servicing Civilian Personnel Advisory Center will be obtained in making determinations. The benchmark position descriptions will not be the sole basis for the determination. Basis for exemption will be documented and attached to each position description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the Civilian Personnel Advisory Center.

4. Classification Authority

The TARDEC Director will have delegated classification authority and may, in turn, re-delegate this authority to appropriate levels. Position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, functional code, specialty work code, pay band level, and the appropriate acquisition codes. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. These decisions will be documented on the position description.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of occupational family, occupational series, position title, and pay band level of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the DoD response, he or she may then appeal to OPM only after DoD has rendered a decision on all the provisions of the demonstration project. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, dispersing, and accounting officials of the Government. Time periods for cases processed under 5 CFR part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a pay schedule; or matters grievable under an administrative or negotiated grievance procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the CPAC/CHRA providing personnel service and will include copies of appropriate demonstration project criteria.

C. Contribution-Based Compensation and Appraisal System (CCAS)

1. Overview

The purpose of CCAS is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the TARDEC workforce. CCAS is essential for the development and continued growth of the high quality, extremely productive, and innovative workforce needed to achieve a quality, agile and innovative organization and meet mission requirements. The CCAS allows for more employee involvement in the assessment process, fosters increased communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for pay changes by linking pay, performance, and contribution. The CCAS process described herein applies to all career paths and pay band levels I through IV. The assessment process for E&S Pay Band V positions will be based on the final outcome of the DoD evaluation and documented in TARDEC Internal Operating Instructions (*see* Section III.A.1. e. for additional information).

CCAS is an assessment system that measures the employee's level of contribution to the organization's mission and how well the employee performed a job. Contribution is simply defined as the measure of the demonstrated value of what an employee did in terms of accomplishing or advancing the organizational objectives and mission impact. CCAS promotes base pay adjustment decisions made on the basis of an individual's overall annual contribution and current base pay, in relation to the other contributions and their level of base pay in the pay pool. The measurement of overall contribution is through a rating process which determines the Overall Contribution Score (OCS).

An employee's performance is a component of contribution that influences the ultimate OCS. Contribution is measured by using a set of factors, discriminators, and descriptors, each of which is relevant to the success of the TARDEC mission. Taken together, these factors, discriminators, and descriptors capture the critical content of jobs in each career path. These factors, discriminators, and descriptors may be modified or supplemented if experience or changing mission requirements indicates a need to do so. These factors, discriminators, and descriptors are the same as those to classify a position at the appropriate pay band level.

The six (6) factors are:

1. Problem Solving,
2. Teamwork/Cooperation,
3. Customer Relations,
4. Leadership/Supervision,
5. Communication, and
6. Resource Management.

Each factor has multiple levels of increasing contribution corresponding to the pay band levels. Each factor contains descriptors for each respective level within the relevant career path. *See* Appendix C for CCAS Factor Descriptions, Level Descriptors, and Discriminators.

The appropriate occupational family career path pay band level performance factor descriptors are used by the rating official to determine the employee's actual contribution score. Employees can score within, above, or below their pay band level. For example, a pay band level II employee could score in the pay band level I, II, III, or IV range. Therefore, for the CCAS process, descriptors for all pay band levels of the occupational family performance factors are presented to better assist the supervisor with the employee assessment.

Normally, the rating period will be one year. The minimum rating period will be 90 days. CCAS payouts can be in the form of increases to base pay and/or in the form of bonuses that are not added to base pay but rather are given as a lump sum payment. Other awards such as special acts, time-off awards, *etc.,* will be retained separately from the CCAS payouts.

The system will have the flexibility to be modified, if necessary, as more experience is gained under the project.

3. Pay Pools

TARDEC employees will be placed into pay pools that are defined for the purpose of determining performance payouts under the CCAS system. The TARDEC Director will establish pay pools. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Neither the pay pool manager nor supervisors within a pay pool will recommend or set their own individual pay. Decisions regarding the amount of the performance payout are based on the established formal payout calculations.

Funds within a pay pool available for performance payouts are divided into two components, base pay and bonus. These funds will be defined based on historical data. Base pay increase fund will be set at no less than two percent of total base pay. The bonus amount will be set at no less than one percent of total base pay. The TARDEC Personnel Management Board will annually review the pay pool funding and recommend adjustments to the TARDEC Director to ensure cost

discipline over the life of the demonstration project.

4. Annual Appraisal Cycle and Rating Process

Typically, the annual appraisal cycle begins on October 1 and ends on September 30 of the following year. At the beginning of the annual appraisal period, the pay band level descriptors for each factor will be provided to employees so that they know the basis on which their performance will be assessed. At the discretion of the pay pool manager, weights will be applied to the factors. A weight of zero may not be applied to any factor and the sum of all weights must equal 100. Employees will be informed of the weights at the beginning of the rating cycle.

Supervisor and employee discussion of specific work assignments and established contribution goals for the rating period for each of the six factors should be conducted on an ongoing basis. These goals can be modified during the rating period and form the foundation of the contributions expected to be achieved.

Typically, the rating official is the first-level supervisor. If the current first-level supervisor has been in place for less than 90 days during the rating cycle, the second-level supervisor serves as the initial rating official. If the second-level supervisor is in place for less than 90 days during the rating cycle, the next higher level supervisor in the employee's rating chain conducts the assessment.

Employees and supervisors alike are expected to actively participate in on-going formal and informal performance discussions regarding expectations. The timing of these discussions will vary based on the nature of work performed, but will occur at least at the mid-point and end of the rating period. At least one review, normally the mid-point review, will be documented as a progress review. More frequent, task specific, discussions may be appropriate in some organizations.

The employee will provide a list of his/her accomplishments to the supervisor at both the mid-point and end of the rating period using the six Contribution Factors described in Section III.C.1. An employee may elect to provide self-ratings on the contribution/performance factors and/or solicit input from team members, customers, peers, supervisors in other units, subordinates, and other sources which will assist the supervisor in fully evaluating contributions. At the end of the annual appraisal period, the immediate supervisor (rating official), from employees' inputs and his/her own knowledge, identifies for each employee the appropriate contribution level and recommends the OCS.

To determine the OCS, numerical values are assigned based on the contribution levels of individuals, using the ranges shown in Table 4. Generally, the OCS is calculated by averaging the numerical values (as weighted) assigned for each of the six performance/contribution factors. (All OCS's will be rounded to the nearest whole number). The rating official in conjunction with the second-level supervisor reviews the OCS for all employees, correcting any inconsistencies identified and making the appropriate adjustments in the factor ratings.

TABLE 4—CONTRIBUTION SCORE RANGES BY OCCUPATIONAL FAMILY

Pay band levels		Engineering & science (DB)	Business & technical (DE)	General support (DK)
		Point range	Point range	Point range
	Very High	115	115	70
V	Range	100–114		
IV	High	96–100	96–100	
	Med	84–95	84–95	
	Low	79–83	79–83	
III	High	79–83	79–83	57–61
	Med	67–78	67–78	47–56
	Low	61–66	61–66	38–46
II	High	62–66	62–66	42–46
	MH	51–61	51–61	
	Med	41–50	41–50	30–41
	ML	30–40	30–40	
	Low	22–29	22–29	22–29
I	High	24–29	24–29	24–29
	Med	06–23	06–23	06–23
	Low	0–5	0–5	0–5

The pay pool panel conducts a final review of the OCS for each employee in the pay pool. The pay pool panel has the authority to make OCS adjustments, after discussion with the initial rating officials, to ensure equity and consistency. Final approval of OCS rests with the pay pool manager, the individual within the organization responsible for managing the CCAS process. The OCS, as approved by the pay pool manager, becomes the rating of record. Rating officials will communicate the factor scores and OCS to each employee and discuss the results.

If on October 1, the employee has served under CCAS for less than ninety (90) consecutive calendar days, the rating official shall wait for the subsequent annual cycle to assess the employee.

Employees who have served under CCAS for less than 90 consecutive calendar days shall not receive contribution rating increases or contribution awards for that cycle.

5. Linking OCS to Base Pay Adjustment

a. The Normal Pay Range (NPR)

The CCAS integrated pay schedule provides a direct link between contribution, performance, and base

pay. This is shown by the graph in Table 5. The horizontal axis spans from 0 to the maximum OCS of 115 for positions in pay band levels I through V. Employees who are performing above the defined criteria of the top pay band level may not exceed the OCS score of 115. The vertical axis spans from zero dollars to the dollar equivalent of the highest positions authorized under this lab demonstration. This encompasses the full base pay range (excluding locality pay and staffing supplements) under this demonstration for the given calendar year (note: Table 5 currently depicts Calendar Year 2010). Each year the rails for the NPR are adjusted based on the GS general pay increase under 5 U.S.C. 5303. The area between the upper and lower rails is considered the normal pay range; when an annual overall contribution score (OCS) plotted against a base pay rate falls on or within the NPR rails, the base pay rate is considered to be appropriate. While there may be rates of base pay that fall above or below the NPR that could be considered not appropriate, there may be circumstances to account for these rates of base pay outside the NPR. Such circumstances as saved pay or minimal contributions/performance could account for base pay rates above the NPR. For base pay rates below the NPR, such situations as exceptional contributions or growth in position responsibilities may warrant higher base pay. Employees whose annual OCS plotted against their base pay falls on or within the rails are considered appropriately compensated. Employees whose current base pay falls above or below the NPR for their assessed contribution score are considered inappropriately compensated.

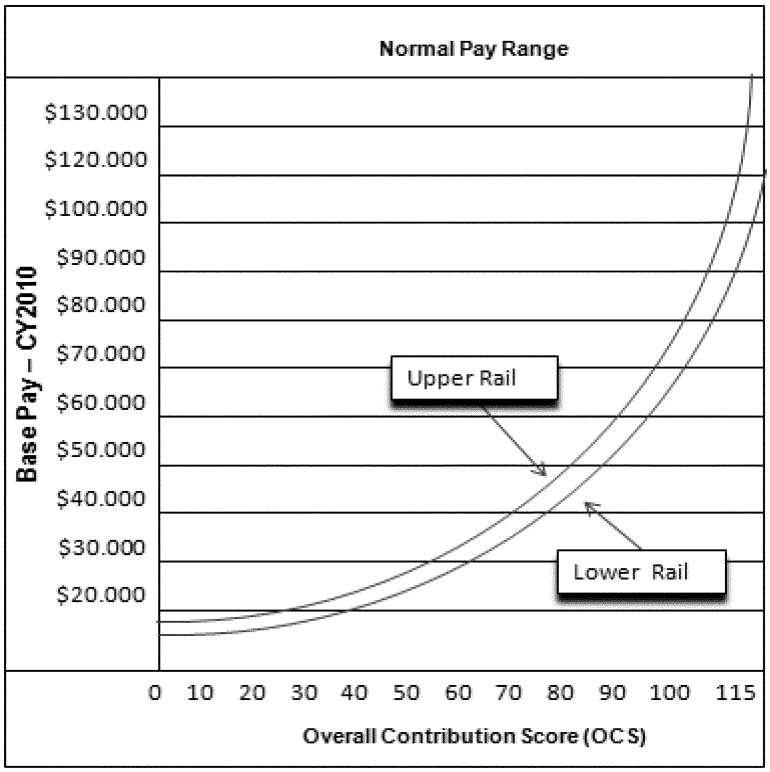
b. The NPR was established using the following parameters:

(1) The lowest possible score is an OCS of 0, which equates to the lowest base pay under this demonstration project, GS–1, step 1,

(2) The OCS of 115 equates to the maximum base pay of Pay Band V.

The upper and lower rails are determined by the formulae below, encompass an area of +/- 8.0 percent in terms of base pay which correlates to approximately +/- 4.0 OCS points.

TABLE 5—NORMAL PAY



c. Formulae:

Given these constraints, the formulae for the upper and lower rails found in Table 5 are:

Base pay upper rail = (GS–1, Step 1) * (1.0800) * $(1.020043)^{OCS}$

Base pay lower rail = (GS–1, Step 1) * (0.9200) * $(1.020043)^{OCS}$

d. The NPR is the same for all the occupational families. What varies among the occupational families are the beginnings and endings of the pay band levels. The minimum and maximum numerical OCS values and associated base pay for each pay band level by occupational family are provided in Table 5. These minimum and maximum breakpoints represent the lowest and highest base pay for the bands; and the minimum and maximum base pay possible for each pay band level. Locality pay or staffing supplements are not included in the NPR but are added to base pay as appropriate.

TABLE 6—OCS AND PAY BAND BASE PAY RANGES

Occupational family	$ (CY10 OCS salaries)				
	I	II	III	IV	V *
E&S (DB)	$17,803–$31,871 0–29	$27,431–$65,731 22–66	$60,283–$93,175 61–83	$84,697–$129,517 79–100	TBD 100–115
Business & Technical (DE).	$17,803–$31,871 0–29	$27,431–$65,731 22–66	$60,283–$93,175 61–83	$84,697–$129,517 79–100	
General Support (DK)	$17,803–$31,871 0–29	$27,431–$44,176 22–51	$37,631–$59,505 38–61		

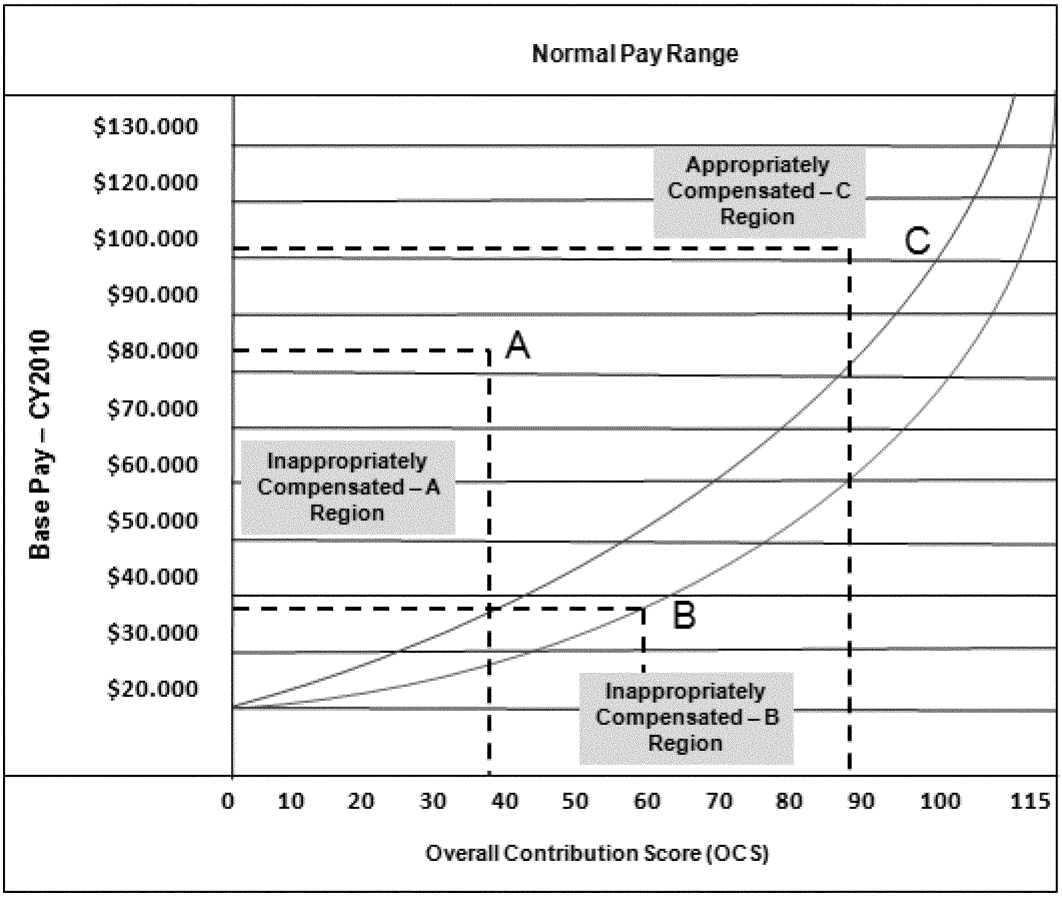
* Pay Band V is above GS–15. Base pay amounts to be determined.

e. OCS Base Pay Adjustment Guidelines

After the pay pool manager approves the OCS for all employees in the pay pool, the current base pay versus OCS is plotted for all employees on a chart similar to Table 7. This plot relates contribution to base pay, and identifies the placement of each employee into one of three regions: Inappropriately Compensated (A Region—above the NPR), Appropriately Compensated (C Region—within the NPR), or Inappropriately Compensated (B Region—below the NPR).

In Table 7, employee C is in the Appropriately Compensated Region (falls on or within the NPR). Employee B is in the Inappropriately Compensated Region (falls below the lower NPR) for his/her contribution to the organization. Employee A is in the Inappropriately Compensated Region above the NPR (*i.e.,* receives high base pay due to such circumstances such as saved pay or contributions do not justify the base pay).

Table 7. Compensation Regions Defined by NPR



f. Table 8 illustrates the additional pay categories available for the three groupings of employees.

The employees whose base pay falls within the NPR must receive the full General Pay Increase (GPI), may receive a contribution rating increase of up to 6 percent, and may receive a contribution award. The contribution rating increase is included as a permanent increase in base pay, but the contribution award is a lump-sum payment that does not affect base pay.

The employees whose base pay falls above the NPR could be denied part or

all of the GPI and may receive no contribution rating increase or contribution bonus. The intent of the demonstration project is to allow managers to retain the ability to determine how much, if any, of the general pay increase would be authorized on a case-by-case basis.

The employees whose base pay falls below the NPR must receive the full general pay increase, may receive up to a 20 percent permanent increase in pay, and also may receive a contribution award.

Employees on retained rate in the demonstration plan will receive base pay adjustments in accordance with 5 U.S.C. 5363 and 5 CFR Part 536. An employee receiving a retained rate is not eligible for a contribution rating increase, but may receive a contribution award.

In general, those employees whose base pay falls below the NPR should expect to receive greater percentage base pay increases than those whose base pay is above the NPR. Over time, people will migrate closer to the normal pay range and receive base pay appropriate for their level of contribution.

Employees whose OCS would result in awarding a contribution rating increase such that the base pay exceeds the maximum base pay for their current pay band level may receive a contribution award equaling the difference.

TABLE 8—COMPENSATION ELIGIBILITY CHART

Category	General pay increase	Contribution base pay increase	Contribution bonus	Locality pay [1]	Staffing supplement
Above the NPR	Could be reduced or denied.	NO	NO	YES	Could be reduced or denied.
Within the NPR	YES	YES [2]—Up to 6 percent.	YES [5]	YES	YES.
Below the NPR	YES	YES [3,4]—Up to 20 percent.	YES [5]	YES	YES.

[1] Base pay plus locality pay may not exceed Executive Level IV adjusted base pay. S&E pay band level V cap to be determined.
[2] May not exceed upper rail of NPR for employee's OCS or maximum base pay for current pay band level.
[3] Over 20 percent requires Director's approval.
[4] May not exceed 6 percent above the lower rail or the maximum base pay for current pay band level.
[5] Pay pool manager approves up to $10,000. Amounts exceeding $10,000 require Director's approval.

6. Accelerated Compensation for Developmental Positions (ACDP)

(a) Accelerated Compensation for Developmental Positions (ACDP) is a pay-setting provision that may be used to recognize the development and attainment of job-related competencies for TARDEC employees participating in training programs, internships, or other developmental capacities as determined by the TARDEC Director. The ACDP includes TARDEC employees serving under the Student Career Experience Program (SCEP) and Student Temporary Employment Program (STEP). ACDP is an increase to base salary. It provides management the opportunity to increase the base pay of employees in developmental positions at rates which match or exceed career ladder promotion rates under the GS system or other labor market forces.

(b) An ACDP increase to base salary may be awarded at anytime throughout the rating year. In order to receive an ACDP, the employee must be in a pay and duty status, have been on an approved CCAS standard for 90 consecutive days and have successfully met the Contribution Goal Objectives of the CCAS standard as determined by a management official.

(c) ACDP is payment in addition to the annual contribution rating increase and contribution award. It generally will not exceed 20 percent of the employee's base pay; however, a higher increase may be provided on a case-by-case basis if approved by an official who is at a higher level than the official who made the initial decision.

(d) ACDP base pay increase is separate funding from the pay pool process.

7. Inadequate CCAS Contribution

Inadequate performance at any time during the appraisal period is considered grounds for initiation of a reduction-in-pay or removal action. The following procedures replace those established in 5 U.S.C. 4303 pertaining to reductions in grade or removal for unacceptable performance except with respect to appeals of such actions. 5 U.S.C. 4303(e) provides the statutory authority for appeals of contribution-based actions. As is currently the situation for performance-based actions taken under 5 U.S.C. 4303, contribution-based actions shall be sustained if the decision is supported by substantial evidence and the Merit Systems Protection Board shall not have mitigation authority with respect to such actions. The separate statutory authority to take contribution-based actions under chapter 75 of title 5, U.S.C., as modified in the waiver section of this notice (section IX), remains unchanged by these procedures.

When an employee's OCS plots above the upper rail of the NPR and the employee is considered to be contributing inadequately the supervisor has two options. The first is to take no action but to document this decision in a memorandum for the record. A copy of this memorandum will be provided to the employee and to higher levels of management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay, reduced in pay band level, or removed.

The second option will include a Contribution Improvement Plan (CIP). The CIP will state how the employee's contribution is inadequate, what improvements/results are required, recommendations on how to achieve adequate contribution, assistance that the laboratory may offer to the employee to assist in improving contribution, and consequences of failure to improve. Additionally, the CIP must include standards for adequate contribution, actions required of the employee, and time in which they must be accomplished to increase and sustain the employee's contribution at an adequate level. When an employee is placed on a CIP, the rating official will afford the employee a reasonable opportunity (a minimum of 60 days) to demonstrate acceptable contribution. These provisions also apply to an employee whose contribution deteriorates during the year.

Employees who are on a CIP at the time pay determinations are made do

not receive performance payouts or the annual GPI. An employee who receives an unacceptable OCS rating of record will not receive any portion of the GPI or RIF service credit until such time as his/her performance improves to the acceptable level and remains acceptable for at least 90 days. When the employee has performed acceptably for at least 90 days, the GPI will not be retroactive but will be granted at the beginning of the next pay period after the supervisor authorizes its payment.

Once an employee has been afforded a reasonable opportunity to demonstrate adequate contribution but fails to do so, a reduction-in-pay (which may include a change to a lower pay band level and/or reassignment), or removal action may be proposed. If the employee's contribution increases to an acceptable level and is again determined to deteriorate in any factor within two years from the beginning of the opportunity period, actions may be initiated to effect reduction in pay or removal with no additional opportunity to improve. If an employee has contributed acceptably for two years from the beginning of an opportunity period, and the employee's overall contribution once again declines to an inadequate level, the employee will be afforded an additional opportunity to demonstrate adequate contribution before it is determined whether or not to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to a 30-day advance notice of the proposed action that identifies specific instances of inadequate contribution by the employee on which the action is based. The employee will be afforded a reasonable time to answer the notice of proposed action orally and/or in writing.

A decision to reduce pay or remove an employee for inadequate contribution may be based only on those instances of inadequate contribution that occurred during the two-year period ending on the date of issuance of the proposed action. The employee will be issued written notice at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights.

All relevant documentation concerning a reduction in pay or removal that is based on inadequate contribution will be preserved and made available for review by the affected employee or a designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary when the employee makes an oral reply; and the written notice of decision and the reasons thereof, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate adequate contribution.

8. Base Pay Increases and Bonuses

The payouts made to employees from the pay pool may be a mix of base pay increases and/or one-time bonuses, such that all of the allocated funds are disbursed as intended. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be limited. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of base pay in an assigned pay band. Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

In addition, a pay pool manager may request approval from the TARDEC Director for use of an Extraordinary Achievement Recognition. Such recognition grants a base pay increase and/or bonus to an employee. The funds available for an Extraordinary Achievement Recognition are separately funded within the constraints of the budget.

9. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off. The funds available to be used for traditional 5 U.S.C. awards are separately funded within the constraints of the laboratory's budget.

While not directly linked to the CCAS system, this additional flexibility is important to encourage outstanding accomplishments and innovation in accomplishing the diverse mission of TARDEC. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards. The delegation of awards authority is an internal Army decision and will be considered as such.

10. Reverse Feedback

Employee feedback to supervisors is considered essential for the success of the TARDEC CCAS system. A feedback instrument for subordinates to anonymously evaluate the effectiveness of their supervisors is being developed and shall be implemented as part of the demonstration project. Supervisors and their managers will be provided the results of that feedback in a format that does not identify individual raters or ratings. The data will be aggregated into a summary and used to establish both personal and organizational performance development goals. The use of this type of instrument will help focus attention on desired leadership behaviors, structure the feedback in a constructive manner, and offset the power imbalance that often prevents supervisors from getting useful feedback from their employees.

11. Adverse Actions

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

12. Grievance of Overall Contribution Score

An employee may grieve the OCS received under the CCAS system. Non-bargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure that does not permit grievances over performance ratings, must file under administrative grievance procedures. Bargaining unit employees whose negotiated grievance procedures cover performance rating grievances must file under those negotiated procedures. Contribution payout amounts resulting from OCS cannot be grieved.

D. Hiring Authority

1. Qualifications

The qualifications required for placement into a position in a pay band within an occupational family career path will be determined using the OPM Operating Manual for Qualification Standards for GS Positions. Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be those corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the E&S occupational family Pay Band II, individuals must meet the basic requirements for a GS–5 as specified in the OPM Qualification Standard for Professional and Scientific Positions.

Selective factors may be established for a position in accordance with the OPM Operating Manual for Qualification Standards for GS Positions, when determined to be

critical to successful job performance. These factors will become part of the minimum requirements for the position, and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Delegated Examining

Competitive service positions will be filled through Merit Staffing, direct-hire authority, Delegated Examining, or other sources. Where delegated to the laboratory level, hiring authority will be exercised in accordance with the requirements of the delegation of authority. The Rule of Three will be eliminated. When there are no more than 15 qualified, eligible applicants and all are either preference eligibles or there are no preference eligibles, all will be immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required. This project includes the authority to utilize the OPM Administrative Careers With America (ACWA) or successor procedures for occupational series which have been designated as having a testing requirement. This allows for the recruitment of entry level positions covered by the Business and Technical Occupational Family at the DE–II pay band.

3. Distinguished Scholastic Achievement Appointment

This demonstration project establishes a Distinguished Scholastic Achievement Appointment using an alternative examining process which provides the authority to appoint undergraduates and graduates through the doctoral level to professional positions at the equivalent of GS–7 through GS–11, and GS–12 positions.

At the undergraduate level, candidates may be appointed to positions at a base pay level no greater than the equivalent of GS–7, step 10, provided that:

(1) They meet minimum standards for the positions as published in OPM's Operating Manual "Qualification Standards for General Schedule Positions" plus any selective factors stated in the vacancy announcement;

(2) The occupation has a positive education requirement; and

(3) The candidate has a cumulative grade point average (GPA) of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualifications Standards for the occupational series.

Appointments may also be made at the equivalent of GS–9 through GS–12 on the basis of graduate education and/or experience for those candidates with a GPA of 3.5 or better (on a scale of 4.0) for graduate level courses in the field of study required for the occupation.

Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligibles who meet the above criteria will be considered ahead of nonpreference eligibles. In making selections, to pass over any preference eligible(s) to select a nonpreference eligible requires approval under current pass-over or objection procedures. Priority must also be given to displaced employees as may be specified in OPM and DoD regulations.

4. Direct Hire Authority for Candidates With Advanced Degrees for Scientific and Engineering Positions

a. Background:

The TARDEC has an urgent need for direct hire authority to appoint qualified candidates possessing an advanced degree to scientific and engineering positions. The market is extremely competitive with industry and academia for the small supply of highly-qualified and security clearable candidates with a Masters Degree or Ph.D. in science or engineering. There are 35,000 scientists and engineers employed in the DoD laboratories; 27% hold Masters Degrees, while 10% are in possession of a Ph.D. The TARDEC employs around 1,427 scientists and engineers; 21% holding Masters Degrees, while 2% percent are in possession of a Ph.D. Over the next five years, the TARDEC plans to hire approximately 500 of the country's best and brightest scientists and engineers (S&Es) just to keep pace with attrition. This number does not include the impact that actions such as Base Realignment and Closure may have on the attrition of S&Es from the TARDEC. Statistics indicate that the available pool of advanced degree, clearable candidates is substantially diminished by the number of non-U.S. citizens granted degrees by U.S. institutions. For instance, in 2006, 20% of Masters Degrees in science and over 35% of Ph.D.s in science were awarded to temporary residents.

It is expected that this hiring authority, together with streamlined recruitment processes, will be very effective in hiring candidates possessing a Masters or Ph.D. and accelerating the hiring process. For instance, under a similar authority found in the NDAA for FY 2009, section 1108, Public Law 110–417, October 28, 2009, one STRL had fifteen Ph.D. selectees in 2009 for the sixteen vacancies for which they were using this hiring authority. Another STRL, using this expedited hiring authority in calendar year 2009, made thirty firm hiring offers in an average of thirteen days from receipt of paper work in the Human Resources Office. Of these thirty selectees, twenty-three possessed Ph.D.s.

b. Definitions:

(1) Scientific and engineering positions are defined as all professional positions in scientific and engineering occupations (with a positive education requirement) utilized by the laboratory.

(2) An advanced degree is a Master's or higher degree from an accredited college or university in a field of scientific or engineering study directly related to the duties of the position to be filled.

(3) Qualified candidates are defined as candidates who:

(a) Meet the minimum standards for the position as published in OPM's operating manual, "Qualification Standards for General Schedule Positions," or the laboratory's demonstration project qualification standards specific to the position to be filled;

(b) Possess an advanced degree; and

(c) Meet any selective factors.

(4) "Employee" is defined by section 2105 of title 5, U.S.C.

c. Provisions:

(1) Use of this appointing authority must comply with merit system principles when recruiting and appointing candidates with advanced degrees to covered occupations.

(2) Qualified candidates possessing an advanced degree may be appointed without regard to the provisions of subchapter 1 of chapter 33 of title 5, United States Code, other than sections 3303, 3321, and 3328 of such title.

(3) The hiring threshold for this authority shall be consistent with DoD policy and legislative language as expressed in any National Defense Authorization Act addressing such.

(4) Positions and candidates must be counted on a full-time equivalent basis.

(5) Science and engineering positions that are filled as of the close of the fiscal year are those positions encumbered on the last day of the fiscal year.

(6) When completing the personnel action, the following will be given as the authority for the Career-Conditional, Career, Term, Temporary, or special demonstration project appointment authority: Section 1108, NDAA for FY 09.

(7) Evaluation of this hiring authority will include information and data on its use, such as numerical limitation, hires made, how many veterans hired, declinations, difficulties encountered, and/or recognized efficiencies.

5. Legal Authority

For actions taken under the auspices of this demonstration project, the legal authorities, Public Law 103–337, as amended, and Public Law 111–84 will be used. For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA will continue to be used.

6. Modified Term Appointments

TARDEC conducts a variety of projects that range from three to six years. The current four-year limitation on term appointments for competitive service employees often forces the termination of these employees prior to completion of projects they were hired to support. This disrupts the research and development process and affects the organization's ability to accomplish the mission and serve its customers.

TARDEC will continue to have career and career-conditional appointments and temporary appointments not-to-exceed one year. These appointments will use existing authorities and entitlements. Under the demonstration project, TARDEC will have the added authority to hire individuals under a modified term appointment. These appointments will be used to fill positions for a period of more than one year, but not more than a total of five years when the need for an employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR 316 in that they may be made for a period not to exceed five, rather than four years. The TARDEC Director is authorized to extend a term appointment one additional year.

Employees hired under the modified term appointment authority are in a non-permanent status, but may be eligible for non-competitive conversion to career or career-conditional appointments. To be converted, the employee must:

a. Have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career or career-conditional appointment at a later date;

b. Have served two years of continuous service in the term position; and

c. Have not been placed on a CIP.

Employees serving under term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional or career appointments if they:

(1) Have served two years of continuous service in the term position;

(2) Are selected under merit promotion procedures for the permanent position; and

(3) Have not been placed on a CIP.

Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous.

7. Initial Probationary Period

The initial probationary period will not be less than one year and will not exceed three years for all newly hired employees as defined in 5 CFR 315. The specific probationary period will be defined and controlled by the TARDEC Director. The purpose of the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a cycle of work and to fully assess an employee's contribution and conduct. All other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. These provisions only apply to those employees who have been appointed under the authority of this demonstration project.

8. Termination of Initial Probationary Period Employees

The probationary or trial period is designed to give supervisors the opportunity to assess how well an employee can perform the duties of a job and if the employee is otherwise well suited for the position. Probationary employees may be terminated for any lawful reason including, but not limited to, failure to demonstrate proper conduct, technical competency, and/or acceptable contribution for continued employment. They may also be terminated for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period, the supervisor shall terminate the employee's services by written notification stating the reasons for termination and the effective date of the action. The information in the notice shall, at a minimum, outline the supervisor's reasons for termination.

9. Supervisory Probationary Periods

New supervisors, that is, those who have not previously completed a supervisory probationary period, will be required to complete a one-year probationary period for the initial appointment to a supervisory position. An additional supervisory probationary period of one year may be required when an employee is officially assigned to a different supervisory position that constitutes a major change in supervisory responsibilities from any previously held supervisory position. If, during a supervisory probationary period, the decision is made to return the employee to a non-supervisory position for reasons related to supervisory performance, the employee will be returned to a comparable position of no lower base pay than the position from which promoted or reassigned.

10. Voluntary Emeritus Corps

Under the demonstration project, the Director will have the authority to offer retired or separated employees voluntary positions. The Director may redelegate this authority. Voluntary Emeritus Corps assignments are not considered employment by the Federal government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service.

The Voluntary Emeritus Corps will ensure continued quality services while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the TARDEC community. The program will be beneficial during manpower reductions, as employees accept retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the Volunteer Emeritus Corps, a volunteer must be recommended by a TARDEC manager to the TARDEC Director or delegated authority. Not everyone who applies is entitled to an emeritus position. The responsible official will document acceptance or rejection of the applicant. For acceptance, documentation must be retained throughout the assignment. For rejection, documentation will be maintained for two years.

To ensure success and encourage participation, the volunteer's Federal

retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated Federal employees may accept an emeritus position without a break or mandatory waiting period.

Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government or to participate on any contracts or solicitations where a conflict of interest exists. The volunteers may be required to submit a financial disclosure form annually. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established among the volunteer, the responsible official, and the Civilian Personnel Advisory Center. The agreement must be finalized before the assumption of duties and shall include the following:

a. Statement that the voluntary assignment does not constitute an appointment in the Civil Service, is without compensation, and the volunteer waives any claims against the Government based on the voluntary assignment;

b. Statement that the volunteer will be considered a Federal employee only for the purpose of injury compensation;

c. Volunteer's work schedule;

d. Length of agreement (defined by length of project or time defined by weeks, months, or years);

e. Support provided by the organization (travel, administrative support, office space, and supplies);

f. Statement of duties;

g. Statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a volunteer;

h. Provision allowing either party to void the agreement with two working days written notice;

i. Level of security access required by the volunteer (any security clearance required by the position will be managed by the employing organization);

j. Provision that any publication(s) resulting from his/her work will be submitted to the Director for review and approval;

k. Statement that the volunteer accepts accountability for loss or damage to Government property occasioned by his/her negligence or willful action;

l. Statement that his/her activities on the premises will conform to the regulations and requirements of the organization;

m. Statement that the volunteer will not release any sensitive or proprietary information without the written approval of the employing organization and further agrees to execute additional non-disclosure agreements as appropriate, if required, by the nature of the anticipated services;

n. Statement that the volunteer will not disclose any inventions made in the course of work performed at the TARDEC. The Director has the option to obtain title to any such invention on behalf of the U.S. Government. Should the Director elect not to take title, the TARDEC shall at a minimum retain a non-exclusive, irrevocable, paid-up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government; and

o. Statement that he/she agrees to comply with designated mandatory training.

Exceptions to the provisions in this procedure may be granted by the Director on a case-by-case basis.

E. Internal Placement

1. Promotion

A promotion is the movement of an employee to a higher pay band in the same occupational family career path or to another pay band in a different occupational family career path, wherein the pay band in the new occupational family has a higher maximum base pay than the band from which the employee is moving. Positions with known promotion potential to a higher band within an occupational family career path will be identified when they are filled. Movement from one occupational family to another will depend upon individual competencies, qualifications, and the needs of the organization. Supervisors may consider promoting employees at any time, since promotions are not tied to the CCAS system. Progression within a pay band is based upon contribution/performance base pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Except as specified below, promotions will be processed under competitive procedures in accordance with Merit System Principles and requirements of the local merit promotion plan.

2. Reassignment

A reassignment is the movement of an employee from one position to a different position within the same occupational family and pay band or to another occupational family and pay band wherein the pay band in the new family has the same maximum base pay. The employee must meet the qualifications requirements for the occupational family and pay band.

Employees may be eligible for an increase to base salary upon temporary or permanent reassignment as described in this section. A decision to increase an employee's pay under this section will be based upon business rules that will define criteria necessary to justify a base pay increase. Examples of criteria may include, but are not limited to, one or more of the following factors:

a. A determination that an employee's responsibilities will significantly increase;

b. Critical mission or business requirements;

c. Need to advance multi-functional competencies;

d. Labor market conditions, *e.g.,* availability of candidates and labor market rates;

e. Reassignment from a nonsupervisory to a supervisory position;

f. Employee's past and anticipated performance and contribution;

g. Physical location of position;

h. Specialized skills, knowledge, or education possessed by the employee in relation to those required by the position; and

i. Salaries of other employees in the organization performing similar work.

When an employee is reassigned within his/her current pay band or to a comparable pay band, an authorized management official will set base pay at an amount no less than the employee's current base pay and may increase the employee's current base pay by up to 6 percent. If the employee's current base pay exceeds the maximum of the new pay band, no increase is provided, and the employee's rate will be set at that maximum rate. There is no limit to the number of times an employee can be reassigned, but local business rules will be established to monitor and control all cases that receive a reassignment base pay change to ensure fairness and consistency across the workforce. Reassignment base pay thresholds may be modified or increased by internal business rules, policies, or procedures as organizational experience dictates.

3. Demotion or Placement in a Lower Pay Band

A demotion is a placement of an employee into a lower pay band within the same occupational family or placement into a pay band in a different occupational family with a lower maximum base pay. Demotions may be for cause (performance or conduct) or for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application

under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures).

4. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with either no change or an increase in base pay within broad descriptions consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a technical expert could be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system while providing management the option of granting additional base pay in recognition of more complex work or broader scope of responsibility.

5. Details

The temporary assignment of an employee to a different demonstration project position for a specific period when the employee is expected to return to his or her regular duties at the end of an assignment. (An employee who is on detail is considered for pay and strength purposes to be permanently occupying his or her regular position.)

6. Exceptions to Competitive Procedures

The following actions are excepted from competitive procedures:

a. Re-promotion to a position which is in the same pay band or GS equivalent and occupational family as the employee previously held on a permanent basis within the competitive service.

b. Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

c. A position change permitted by reduction-in-force procedures.

d. Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

e. A temporary promotion or detail to a position in a higher pay band of 180 days or less.

f. A promotion due to the reclassification of positions based on accretion (addition) of duties.

g. A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

h. Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

i. Impact of person in the job and Factor IV process (application of the Research Grade Evaluation Guide, Equipment Development Grade Evaluation Guide, Part III, or similar guides) promotions.

F. Pay Administration

1. General

Pay administration policies will be established by the Personnel Management Board. These policies will be exempt from Army Regulations or RDECOM local pay fixing policies, but will conform to basic governmental pay fixing policy. Employees whose performance is acceptable may be eligible for the full annual general pay increase and the full locality pay. TARDEC may make full use of recruitment, retention, and relocation payments as provided for by OPM under 5 U.S.C. and 5 CFR pay flexibilities unless waived by this FRN.

2. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the rate of pay for Level I of the Executive Schedule to be consistent with 5 CFR 530.201 and consistent with 5 U.S.C. 5307 and 5 CFR 530, subpart B. In addition, each pay band will have its own base pay ceiling. Base pay rates for the various pay bands will be linked to the OCS of the CCAS system. Other than where a retained rate applies, base pay will be limited to the maximum base pay payable for each pay band.

3. Pay Setting for Appointment

Upon initial appointment, the individual's base pay may be set at the lowest base pay in the pay band or anywhere within the pay band level consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed. Guidance on pay setting for new hires will be established by the Personnel Management Board.

4. Highest Previous Rate (HPR)

HPR will be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.221. Use of HPR will be at the supervisor's discretion; but if used, HPR is subject to policies established by the Personnel Management Board.

5. Pay Setting for Promotion

The minimum base pay increase upon promotion to a higher pay band will be six percent or the minimum base pay rate of the new pay band, whichever is greater. In no case will the increase exceed the maximum base pay for the pay band. The maximum base pay increase for promotion may be exceeded when necessary to allow for the minimum base pay increase. When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the Personnel Management Board. In no case may those adjustments increase the base pay for the position of record beyond the applicable pay range maximum base pay rate.

6. Pay Setting for Reassignment

A reassignment may be effected without a change in base pay. However, a base pay increase may be granted where a reassignment significantly increases the complexity, responsibility, and authority or for other compelling reasons. Such an increase is subject to the specific guidelines established by the Personnel Management Board.

7. Pay Setting for Demotion or Placement in a Lower Pay Band

Employees demoted for cause (performance or conduct) are not entitled to pay retention and will receive a minimum of a five percent decrease in base pay. Employees demoted for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements or at the employee's request, or placement actions resulting from RIF procedures) may be entitled to pay retention in accordance with the

provisions of 5 U.S.C. 5363 and 5 CFR 536, except as waived or modified in section IX of this plan.

Employees who are on a CIP at the time base pay determinations are made do not receive contribution payouts or the general pay increase. This action may result in a base pay that is identified in a lower pay band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303).

8. Supervisory and Team Leader Pay Adjustments

a. Supervisory and team leader pay adjustments may be approved by the TARDEC Director based on the recommendation of the Personnel Management Board to compensate employees with supervisory or team leader responsibilities. Only employees in supervisory or team leader positions as defined by the OPM GS Supervisory Guide or GS Leader Grade Evaluation Guide may be considered for the pay adjustment. These pay adjustments are funded separately from performance pay pools. These pay adjustments are increases to base pay, ranging up to ten percent of that pay rate for supervisors and up to five percent of that pay rate for team leaders. Pay adjustments are subject to the constraint that the adjustment may not cause the employee's base pay to exceed the pay band maximum base pay. Criteria to be considered in determining the base pay increase percentage include:

(1) Needs of the organization to attract, retain, and motivate high quality supervisors/team leaders;

(2) Budgetary constraints;

(3) Years and quality of related experience;

(4) Relevant training;

(5) Performance appraisals and experience as a supervisor/team leader;

(6) Organizational level of position; and

(7) Impact on the organization.

a. The pay adjustment will not apply to employees in Pay Band V of the E&S occupational family.

b. After the date of conversion into the demonstration project, a pay adjustment may be considered under the following conditions:

(1) New hires into supervisory/team leader positions will have their initial rate of base pay set at the supervisor's discretion within the pay range of the applicable pay band. This rate of pay may include a pay adjustment determined by using the ranges and criteria outlined above.

(2) An employee selected for a supervisory/team leader position that is within the employee's current pay band may also be considered for a base pay adjustment. If a supervisor/team leader is already authorized a base pay adjustment and is subsequently selected for another supervisor/team leader position within the same pay band, then the base pay adjustment will be re-determined.

(3) Existing Supervisors/Team Leaders will be converted at their existing base rate of pay and may be eligible for a base pay adjustment upon review of the Personnel Management Board following the conversion.

c. The supervisor/team leader pay adjustment will be reviewed annually, with possible increases or decreases based on the appraisal scores for the performance element, Team/Project Leadership or Supervision/EEO. The initial dollar amount of a base pay adjustment will be removed when the employee voluntarily leaves the position. The cancellation of the adjustment under these circumstances is not an adverse action and is not subject to appeal. If an employee is involuntarily removed from a non-probationary supervisory/team leader position for unacceptable performance or conduct, the base pay adjustment will be removed under adverse action procedures. However, if an employee is involuntarily removed from a non-probationary supervisory/team leader position for conditions other than unacceptable performance or conduct, then pay retention will follow current law and regulations at 5 U.S.C. 5362 and 5363 and 5 CFR part 536, except as waived or modified in section IX.

9. Supervisory and Team Leader Pay Differentials

Supervisory and team leader pay differentials may be used by the TARDEC Director to provide an incentive and to reward supervisors and team leaders as defined by the OPM GS Supervisory Guide and GS Leader Grade Evaluation Guide. Pay differentials are not funded from performance pay pools. A pay differential is a cash incentive that may range up to ten percent of base pay for supervisors and up to five percent of base pay for team leaders. It is paid on a pay-period basis for a specified period of time not to exceed (NTE) one year and is not included as part of the base pay. Criteria to be considered in determining the amount of the pay differential are the same as those identified for Supervisory and Team Leader Pay Adjustments. The pay differential will not apply to employees in Pay Band V of the E&S occupational family.

The pay differential may be considered, either during conversion into or after initiation of the demonstration project, if the supervisor/team leader has subordinate employees in the same pay band. The differential must be terminated if the employee is removed from a supervisory/team leader position, regardless of cause.

After initiation of the demonstration project, all personnel actions involving a supervisory or team leader differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the TARDEC Director. The termination or reduction of the differential is not an adverse action and is not subject to appeal.

10. Staffing Supplements

Employees assigned to occupational categories and geographic areas covered by GS special rates will be entitled to a staffing supplement if the maximum adjusted base pay for the banded GS grades (*i.e.,* the maximum GS locality rate) to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to the base pay, much like locality rates are added to base pay. For employees being converted into the demonstration project, total pay immediately after conversion will be the same as immediately before (excluding the impact of any WGI buy-in for GS employees), but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no loss or decrease in total pay.

The staffing supplement is calculated as follows. Upon conversion, the demonstration base rate will be established by dividing the employee's former GS basic pay (including any locality pay or special salary rate) or, for former NSPS employees, the NSPS adjusted salary (including any local market supplement) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base pay rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base pay rate plus the staffing supplement. This amount will equal the employee's former GS or NSPS adjusted

base pay rate. Simplified, the formula is this:

$$\text{Staffing Factor} = \frac{\text{Maximum special rate for the banded grades}}{\text{GS unadjusted rate corresponding to that special rate}}$$

$$\text{Demonstration base pay rate} = \frac{\text{Former GS or NSPS adjusted base pay rate or equivalent (specialty or locality rate)}}{\text{Staffing factor}}$$

$$\text{Staffing supplement} = \text{Demo or NSPS base pay rate* (staffing factor -1)}$$

$$\text{Pay upon conversion} = \text{Demonstration base pay rate + staffing supplement (sum will equal existing adjusted rate)}$$

If an employee is in a band where the maximum GS or NSPS adjusted base pay rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration base pay rate is derived by dividing the employee's former GS adjusted base pay rate (the higher of locality rate or special rate) by the applicable locality pay factor. The employee's demonstration locality-adjusted base pay rate will equal the employee's former GS adjusted base pay rate in accordance with the above provisions using the new special salary rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

An established base pay rate plus the staffing supplement will be considered adjusted base pay for the same purposes as a locality rate under 5 CFR 531.610, *i.e.,* for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

If an employee is in an occupational category covered by a new or modified special salary rate table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's adjusted base pay may be reviewed and adjusted to accommodate the rate increase provided by the special salary rate table. The review may result in a one-time base pay increase if the employee's adjusted base pay equals or is less than the highest special salary rate grade and step that exceeds the comparable locality grade and step. Demonstration project operating procedures will identify the officials responsible to make such reviews and determinations.

11. Pay Retention Within the Demonstration Project

For purposes of actions within the TARDEC demonstration project that provide entitlement to pay retention the standard provisions of pay retention (5 U.S.C. 5362 and 5363 and 5 CFR 536) shall apply to employees after conversion to the demonstration project, except as waived or modified in Section IX of this plan. Wherever the term "grade" is used in the law or regulation the term "pay band" will be substituted. The TARDEC Director may also grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

G. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training; rotational job assignments; developmental assignments to Army Materiel Command/Army/DoD; and self-directed study via correspondence courses, local colleges, and universities. Each developmental opportunity must result in a product, service, report, or study that will benefit the TARDEC or customer organization as well as increase the employee's individual effectiveness. The developmental opportunity period will not result in loss of (or reduction) in base pay, leave to which the employee is otherwise entitled, or credit for service time. The positions of employees on expanded developmental opportunities may be back-filled (*i.e.,* with temporarily assigned, detailed or promoted employees or with term employees). However, that position or its equivalent must be made available to the employee upon return from the developmental period. The Personnel Management Board will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for developmental opportunities.

a. *Sabbaticals.* The TARDEC Director has the authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical will be to permit an employee to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee's development and effectiveness. Each sabbatical must result in a product, service, report, or study that will benefit the TARDEC mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching; research; self-directed or guided study; and on-the-job work experience.

One paid sabbatical of up to twelve months in duration or one unpaid sabbatical of up to six months in a calendar year may be granted to an employee in any seven-year period. Employees will be eligible to request a

sabbatical after completion of seven years of Federal service. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in the TARDEC for a period three times the length of the sabbatical. If an employee voluntarily leaves TARDEC before the service obligation is completed, he/she is liable for repayment of expenses incurred by TARDEC that are associated with training during the sabbatical. Expenses do not include salary costs. The TARDEC Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

b. *Critical Skills Training (Training for Degrees).* The TARDEC Director has the authority to approve academic degree training consistent with 5 U.S.C. 4107. Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a critical tool for recruiting and retaining employees with or requiring critical skills. Academic degree training will ensure continuous acquisition of advanced specialized knowledge essential to the organization, and enhance our ability to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of degree or certificate payment and that such decisions are fully documented. Employees approved for degree training must sign a service obligation agreement to continue in service in TARDEC for a period three times the length of the training period. If an employee voluntarily leaves the TARDEC before the service obligation is completed, he/she is liable for repayment of expenses incurred by TARDEC related to the critical skills training. Expenses do not include salary costs. The TARDEC Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

c. *Student Career Experience Program (SCEP) Service Agreement.* The extended repayment period also applies to employees under the SCEP who have received tuition assistance. They will be required to sign a service agreement up to three times the length of the academic training period or periods (semesters, trimesters, or quarters).

H. Reduction-in-Force (RIF) Procedures

The competitive area may be determined by occupational family, lines of business, product lines, organizational units, funding lines, occupational series, functional area, and/or geographical location, or a combination of these elements, and must include all Demonstration Project employees within the defined competitive area. The RIF system has a single round of competition to replace the current GS two-round process. Once the position to be abolished has been identified, the incumbent of that position may displace another employee when the incumbent has a higher retention standing and is fully qualified for the position occupied by the employee with a lower standing.

Retention standing is based on tenure, veterans' preference, and length of service augmented by performance. Modified term appointment and temporary appointment employees are in Tenure Group 0, and are not eligible to complete within a RIF. RIF procedures are not required when separating these employees when their appointments expire.

Displacement is limited to one pay band level below the employee's present pay band level within the occupational family career path. Pay band level I employees can displace within their current pay band level. A veterans' preference eligible employee with a compensable service connected disability of 30 percent or more may displace up to two pay band levels below the employee's present level within the career path. A pay band level I preference eligible employee (with a compensable service connected disability of 30 percent or more) can displace within their current pay band. The same "undue disruption" standard currently utilized, serves as the criteria to determine if an employee is fully qualified.

The additional RIF service credit for performance shall be based on the last three OCS scores and will be applied as follows:

a. 20 years of credit for each year the OCS is equal to or greater than 94 percent of the expected OCS.

b. 16 years of credit for each year the OCS is less than 94 percent but greater than 92 percent of the expected OCS.

c. 12 years of credit for each year the OCS is less than 92 percent but greater than 90 percent of the expected OCS.

d. Zero (0) year of credit for each year the employees OCS is less than 90 percent of the expected OCS.

Note 1: Expected OCS is the OCS that corresponds to the employee's base pay at the time of rating.

An employee whose current overall contribution score places him/her in the area above the upper rail and on a CIP, any time during the rating cycle, may only displace an employee who is also above the upper rail and also on a CIP during that same period. The displaced individual may similarly displace another employee on a CIP. If/When there is no position in which an employee can be placed by this process or assigned to a vacant position, that employee will be separated. If an employee has not been rated under the demonstration project their rating will be considered acceptable and they will be given the full 21 years of performance credit. After completion of the first or second rating cycle the total years of service will be prorated based on ratings received to date.

IV. Implementation Training

A. Critical to the success of the demonstration project is the training developed to promote understanding of the broad concepts and finer details needed to implement and successfully execute this project. New pay banding, job classification, and performance management systems all contribute to significant cultural change to the organization. Training will be tailored to address employee concerns and to encourage comprehensive understanding of the demonstration project. Training will be required both prior to implementation and at various times during the life of the demonstration project.

B. A training program will begin prior to implementation and will include modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

1. An overview of the demonstration project personnel system;
2. How employees are converted into and out of the system;
3. Pay banding;
4. The CCAS system;
5. Defining contribution goals;
6. How to assign weights;
7. Assessing performance—giving feedback;
8. New position descriptions; and
9. Demonstration project administration and formal evaluation.

C. Various types of training are being considered, including videos, on-line tutorials, and train-the-trainer concepts.

V. Conversion Into the Demonstration Project

A. Conversion From NSPS to the Demonstration Project

1. Placement into Demonstration Project Occupational Families, Career Paths, Pay Plans, and Pay Bands

The employee's NSPS occupational series, pay plan, pay band, and supervisory code will be considered upon converting into the demonstration project as follows:

a. Determine the appropriate demonstration project pay plan. Employees will be converted into an occupational family career path pay plan based on the occupational series of their position. If there is a separate pay plan for supervisors, conversion to that pay plan will be without regard to the occupational series. In cases where the employee is assigned to a NSPS-unique occupational series, a corresponding OPM occupational series must be identified using OPM GS classification standards and guidance to determine the proper demonstration project pay plan.

b. Determine the appropriate demonstration project pay band. The appropriate pay band will be determined by establishing the corresponding GS grade for the employee's NSPS position using OPM GS classification standards and guidance. Once the GS grade has been determined, the employee's position will be placed in the appropriate demonstration project pay band in the occupational family career path. In cases where a GS grade is encompassed in more than one pay band of a career path, a careful review will be required using demonstration project classification criteria to determine the appropriate pay band in which to place the position.

2. Setting Pay Upon Conversion to the Demonstration Project

a. Determine the appropriate base salary. Conversion from NSPS into the demonstration project will be accomplished with full employee pay protection. Adverse action provisions will not apply to the conversion action. In accordance with section 1113(c)(1) of NDAA 2010, which prohibits a loss of or decrease in pay upon transition from NSPS, employees converting to the demonstration project will retain the adjusted salary (as defined in 5 CFR 9901.304) from their NSPS permanent or temporary position at the time the position converts. Upon conversion, the retained NSPS adjusted salary may not exceed Level IV of the Executive Schedule plus 5 percent. If the employee's base pay exceeds the maximum rate for his or her assigned demonstration project pay band, the employee will be placed on indefinite pay retention until an event, as described in 5 CFR 536.308, results in a loss of eligibility for or termination of pay retention. Increases to the retained rate after conversion will be in accordance with applicable regulations; however, for any NSPS employee whose retained rate exceeds Executive Level IV upon conversion, any adjustment to the retained rate in accordance with applicable pay retention regulations may not cause the employee's adjusted pay to exceed Executive Level IV plus 5 percent.

b. Employees Previously Covered by an NSPS Targeted Local Market Supplement (TLMS)

Employees who were covered by an NSPS TLMS prior to conversion to the demonstration project will no longer be covered by a TLMS. Instead they may receive a locality or similar supplement (*e.g.,* a staffing supplement), whichever is greater, or pay retention, if applicable. The adjusted base pay upon conversion will not change.

c. Other Pay. Once converted, employees may receive other adjustments and/or differentials, as applicable, as described in this **Federal Register** notice or an internal operating instruction.

3. Fair Labor Standards Act (FLSA) Status

Since FLSA provisions were not waived under NSPS and duties do not change upon conversion to the demonstration project, the FLSA status determination will remain the same upon conversion. Employees will be converted to the demonstration project with the same FLSA status they had under NSPS.

4. Transition Equity

During the first 12 months following conversion to the demonstration project, management may approve certain adjustments within the pay band for pay equity reasons stemming from conversion. For example, if an employee would have been otherwise promoted but demonstration project pay band placement no longer provides a promotion opportunity, a pay equity adjustment may be authorized provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment. The decision to grant a pay equity adjustment is at the sole discretion of TARDEC management and is not subject to employee appeal procedures.

During the first 12 months following conversion, management may approve an adjustment of not more than 10 percent, provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment, to mitigate base pay inequities that may be caused by artifacts of the process of conversion into STRL pay bands. For instance, inappropriate "leap-frogging" of more senior employees by more junior employees when the inversion of compensation levels are not warranted by performance or mission accomplishment outcomes.

5. Pay Band Retention

Employees converting from NSPS to the demonstration project will not be granted pay band retention based on the pay band formerly assigned to their NSPS position.

6. Converting Employees on NSPS Term and Temporary Appointments

a. Employees serving under term appointments at the time of conversion to the demonstration project will be converted to modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career or career-conditional appointments in the competitive service provided they:

(1) Have served two years of continuous service in the term position;

(2) Were selected for the term position under competitive procedures; and

(3) Are performing at a satisfactory level.

Converted term employees who do not meet these criteria may continue on their term appointment up to the not-to-exceed date established under NSPS. Extensions of term appointments after conversion may be granted in accordance with 5 CFR part 316, subpart D.

b. Employees serving under temporary appointments under NSPS when their organization converts to the demonstration project will be converted and may continue on their temporary appointment up to the not-to-exceed date established under NSPS. Extensions of temporary appointments after conversion may be granted in accordance with 5 CFR 213.104 for excepted service employees and 5 CFR part 316, subpart D, for competitive service employees.

7. Probationary Periods

a. Initial probationary period. NSPS employees who have completed an initial probationary period prior to conversion from NSPS will not be required to serve a new or extended initial probationary period. NSPS employees who are serving an initial probationary period upon conversion from NSPS will serve the time remaining on their initial probationary period and may have their initial probationary period extended in accordance with the demonstration project regulation and implementing issuances.

b. Supervisory probationary period. NSPS employees who have completed a supervisory probationary period prior to conversion from NSPS will not be required to serve a new or extended supervisory probationary period while in their current position. NSPS employees who are serving a supervisory probationary period upon conversion from NSPS will serve the time remaining on their supervisory probationary period.

B. Conversion From Non-NSPS System to the Demonstration Project

Conversion from current GS, Acq Demo, or other systems not covered by NSPS into the new pay band system will be accomplished during implementation of the demonstration project (refer Section III.A.2 and Table 1). Initial entry into the demonstration project will be accomplished through a full employee-protection approach that ensures each employee an initial place in the appropriate pay band without loss or decrease of adjusted base pay on conversion. If the employee's base pay exceeds the maximum rate for his or her assigned demonstration project pay band, the employee will be placed on pay retention.

Employees serving under term appointments at the time of the implementation of the demonstration project will be converted to the modified term appointment if all requirements (refer III.D.4 Revisions to Term Appointments) have been satisfied. Position announcements, *etc.,* will not be required for these term appointments.

Employees serving under temporary appointments at the time of the implementation of the demonstration project will be converted to the demonstration project. Employees on temporary appointments at the time of conversion may continue on those appointments up to the not-to-exceed date established under the former system. Extensions of temporary appointments may be granted in accordance with 5 CFR 213.104 for excepted service employees and 5 CFR part 316, subpart D, for competitive service employees.

Employees who are covered by GS special salary rates prior to entering the demonstration project will no longer be considered a special salary rate employee under the demonstration project. Instead, they will receive locality pay or a staffing supplement, whichever is greater. Special conversion rules, as described in III.F.10, describe staffing supplements which replace GS special salary rates and NSPS targeted local market supplements and apply to employees in occupations and geographic locations to which GS special salary rates or NSPS targeted local market supplements would otherwise apply. The adjusted base pay of these employees will not change. Rather, the employees will receive a new adjusted base pay rate computed under the staffing supplement rules in section III.F.10.

Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the grade or pay band that corresponds to the position of record. When a temporary promotion is terminated, pay will be determined based on the position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the Personnel Management Board. In no case may those adjustments increase the pay for the position of record beyond the applicable pay band maximum base pay. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases, actions to make the temporary promotion permanent will be considered, and if implemented, will be subject to all existing priority placement programs.

During the first 12 months following conversion, employees will receive pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same pay band, the employee's performance warrants the promotion, and promotions would have otherwise occurred during that period. For employees who receive an in-level promotion in accordance with this provision at the time of conversion, a prorated step increase equivalent as defined below will not be provided.

For GS employees, rules governing GS within-grade increases (WGIs) will continue in effect until conversion. Adjustments to a GS employee's base pay for WGI equity will be computed as of the effective date of conversion provided the employee is performing at an acceptable level of competence as defined in 5 CFR 531.403. WGI equity will be acknowledged by increasing base pay by a prorated share based upon the number of full weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. GS employees at step 10 or receiving retained rates, on the day of implementation will not be eligible for WGI equity adjustments since they are already at or above the top of the step scale. GS employees serving on retained grade will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate. Acq Demo and NSPS employees do not receive WGI's and will convert into the demonstration project without WGI adjustments.

Employees who enter the demonstration project from other pay systems (DCIPS, Acq Demo, or other STRLs) after initial implementation by lateral transfer, promotion, reassignment, reduction in band, or realignment will be subject to the pay rules that govern conversion out of their respective systems. Pay conversion into Lab Demo will be based upon the job classification of the employee's new position.

C. Movement Out of the Demonstration Project

1. Termination of Coverage Under the TARDEC Demonstration Project Pay Plans

In the event employees' coverage under the TARDEC demonstration project pay plans is terminated, employees move with their demonstration project position to another system applicable to TARDEC employees. The grade of their demonstration project position in the new system will be based upon the position classification criteria of the gaining system. Employees when converted to their positions classified under the new system will be eligible for pay retention under 5 CFR part 536, if applicable.

2. Determining a GS-Equivalent Grade and GS-Equivalent Rate of Pay for Pay Setting Purposes When a TARDEC Employee's Coverage by a Demonstration Project Pay Plan Terminates or the Employee Voluntarily Exits the TARDEC Demonstration Project

a. If a demonstration project employee is moving to a GS or other pay system position, the following procedures will be used to translate the employee's project pay band to a GS-equivalent grade and the employee's project base pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined before movement out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

(1) Equivalent GS–Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is provided that grade as the GS-equivalent grade. An employee in a pay band corresponding to two or more grades is determined to have a GS-equivalent grade corresponding to one of those grades according to the following rules:

(a) The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

i. The GS base schedule;

ii. The locality rate schedule for the locality pay area in which the position is located; or

iii. The appropriate special rate schedule for the employee's occupational series, as applicable.

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(b) If the employee's adjusted base pay under the demonstration project equals or exceeds the applicable step 4 adjusted base pay rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted base pay under the demonstration project is lower than the applicable step 4 adjusted base pay rate of the highest grade, the adjusted base pay under the demonstration project is compared with the step 4 adjusted base pay rate of the second highest grade in the employee's pay band. If the employee's adjusted base pay under the demonstration project equals or exceeds the step 4 adjusted base pay rate of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted base pay under the demonstration project rate equals or exceeds the applicable step 4 adjusted base pay rate of the grade. The employee is then converted at that grade. If the employee's adjusted base pay is below the step 4 adjusted base pay rate of the lowest grade in the band, the employee is converted to the lowest grade.

(e) Exception: An employee will not be provided a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has either undergone a reduction in band or a reduction within the same pay band due to unacceptable performance.

(2) Equivalent GS-Rate-of-Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted base pay under the demonstration project (*i.e.,* including any locality payment or staffing supplement) is converted to a GS adjusted base pay rate on the highest applicable GS rate range for the converted GS grade. For this purpose, a GS rate range includes a rate range in:

i. The GS base schedule,

ii. An applicable locality rate schedule, or

iii. An applicable special rate schedule.

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted base pay under the demonstration project is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.,* same step position).

(d) If the highest applicable GS rate range is a special rate range, the employee's adjusted base pay under the demonstration project is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay will be the GS rate corresponding to the converted special rate (*i.e.,* same step position).

(3) Employees with Pay Retention

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her pay band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

3. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR Section 531.405(b).

D. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained. Servicing CPACs will continue to process personnel-related actions and to provide other appropriate services.

E. Automation

The TARDEC will continue to use the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

An automated tool will be used to support computation of performance-related pay increases and awards and other personnel processes and systems associated with this project.

F. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications

may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. DoDI 1400.37, July 28, 2009, provides instructions for adopting other STRL flexibilities, making minor changes to an existing demonstration project, and requesting new initiatives.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for section 342(b) demonstration projects. TARDEC, DA, and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission, and any potential adverse impact on any employee groups. Major changes and modifications to the interventions will be made if warranted by formative evaluation data and will be published in the **Federal Register** to the extent required. At the five-year point, the demonstration project will be reexamined for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

VII. Evaluation Plan

A. Overview

Chapter 47 of title 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research and Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

1. Appendix D shows an intervention model for the evaluation of the demonstration project. The model is designed to evaluate two levels of organizational performance: Intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (*i.e.,* cost, quality, and timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

2. Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: Context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (*e.g.,* downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers:

a. The extent to which the HR changes are given a fair trial period;

b. The extent to which the changes are implemented; and

c. The extent to which the changes conform to the HR interventions as planned.

The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (*e.g.,* attitudes) of individuals who are implementing the program.

3. The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other protected groups, the Merit System Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

4. The intervention model at Appendix D will be used to measure the effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or "intervention" that will be measured and shows:

a. The expected effects of the intervention,

b. The corresponding measures, and

c. The data sources for obtaining the measures.

Although the model makes predictions about the outcomes of specific interventions, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (*e.g.,* the job market, legislation, and internal support systems) or support factors (*e.g.,* training, automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a title 5 U.S.C. comparison group will be compiled from the Central Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

D. Method of Data Collection

1. Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

2. Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected:

a. Workforce data;

b. Personnel office data;

c. Employee attitude surveys;

d. Focus group data;

e. Local site historian logs and implementation information;

f. Customer satisfaction surveys; and

g. Core measures of organizational performance.

3. The evaluation effort will consist of two phases, formative and summative evaluation, covering at least 5 years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

VIII. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project, and labor expenditures will be tracked yearly. Implementation costs (including project development, automation costs, step buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline.

The Personnel Management Board will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The projected annual expenses are summarized in Table 9. Project evaluation costs are not expected to continue beyond the first five years unless the results and external requirements warrant further evaluation.

TABLE 9—PROJECTED DEVELOPMENT COSTS

[In thousands of dollars]

	FY10	FY11	FY12	FY13	FY14
Design & Termination From NSPS	2–K	2–K			
Training	5–K	20–K	10–K	5–K	5–K
Project Evaluation	0–K	35–K	25–K	25–K	25–K
Automation	0–K	190–K	40–K	40–K	40–K
Totals	7–K	247–K	75–K	70–K	70–K

IX. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain title 5 U.S.C. and 5 CFR provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5 U.S.C.

Chapter 5, section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Voluntary Emeritus Corps are considered employees of the Federal government for purposes of this section.

Chapter 31, section 3111: Acceptance of Volunteer Service. Waived to allow for a Volunteer Emeritus Corps in addition to student volunteers.

Chapter 33, subchapter 1, section 3318(a): Competitive Service, Selection from Certificate. Waived to the extent necessary to eliminate the requirement for selection using the "Rule of Three."

Chapter 33, section 3319: Alternative Ranking and Selection Procedures. This section is waived to eliminate quality categories.

Chapter 33, section 3321: Competitive Service; Probationary Period. This section waived only to the extent necessary to replace grade with "pay band level."

Chapter 33, section 3341: Details. Waived as necessary to extend the time limits for details.

Chapter 41, section 4108 (a)–(c): Employee Agreements: Service After Training. Waived to the extent necessary to: (1) Provide that the employee's service obligation is to continue in the service of TARDEC for the period of the required service; (2) permit the TARDEC Director, to waive in whole or in part, a right of recovery; and (3) require employees under the Student Career Experience Program who have received tuition assistance to sign a service agreement up to three times the length of the training.

Chapter 43, section 4302 and 4303: Waived to the extent necessary to: (1) Substitute pay band for grade; and (2) provide that moving to a lower pay band as a result of not receiving the general pay increase because of poor performance is not an action covered by the provisions of sections 4303(a) through (d).

Chapter 43, section 4304(b)(1) and (3): Responsibilities of the OPM. Waived in its entirety to remove the responsibilities of the OPM with respect to the performance appraisal system.

Chapter 45, subchapter I, section 4502(a) and (b)—Waiver to permit TARDEC to approve awards up to $25,000 for individual employees.

Chapter 51, sections 5101–5112: Classification. Waived as necessary to allow for the demonstration project pay banding system.

Chapter 53, sections 5301, 5302 (8) and (9), 5303, and 5304: Pay Comparability System. Sections 5301, 5302, and 5304 are waived to the extent necessary to allow: (1) Demonstration project employees to be treated as GS employees and (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay.

Chapter 53, section 5305: Special Pay Authority. Waived to the extent necessary to allow for use of a staffing supplement in lieu of the special pay authority.

Chapter 53, sections 5331–5336: General Schedule Pay Rates. Waived in its entirety to allow for the demonstration project's pay banding system and pay provisions.

Chapter 53, sections 5361–5366: Grade and Pay Retention. Waived to the extent necessary to: (1) Replace "grade" with "pay band;" (2) allow demonstration project employees to be treated as GS employees; (3) provide that pay band retention provisions do not apply to conversions from GS special rates or NSPS Targeted Local Market Supplements to demonstration project pay, as long as total pay is not reduced, to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position, and to movements to a lower pay band as a result of not receiving the general pay increase due to a rating of record of "Unacceptable" contribution; (4) provide that an employee on pay retention whose rating of record is "Unacceptable" contribution is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position; and (5) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement.

Chapter 55, section 5542(a) (1)–(2): Overtime rates; computation. Waived to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions.

Chapter 55, section 5545(d): Hazardous duty differential. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. Chapter 55, section 5546: Waived to allow holiday premium pay at twice an employee's adjusted salary hourly rate for each hour worked as directed or approved, including overtime hours.

Chapter 55, section 5547 (a)–(b): Limitation on premium pay. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which an employee belongs is deemed to be the applicable special rate in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, section 5753, 5754, and 5755: Recruitment and relocation bonuses, retention incentives and supervisory differentials. Waived to the extent necessary to allow: (1) Employees and positions under the demonstration project to be treated as employees and positions under the GS and (2) that management may offer a bonus to incentivize geographic mobility to a SCEP student.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. Waived to the extent necessary to provide that cost of living allowances paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Chapter 75, section 7512(3): Adverse actions. Waived to the extent necessary to replace "Grade" with "Pay Band."

Chapter 75, section 7512(4): Adverse actions. Waived to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from GS special rates to demonstration project pay, as long as total pay is not reduced; (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position; and (3) reduction in supervisory pay due to a performance review.

B. Waivers to Title 5 CFR

Part 300, sections 300.601 through 605: Time-in-Grade restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer service. Waived to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Part 315, section 315.801(a), 315.801(b)(1), (c), and (e), and 315.802(a) and (b)(1): Probationary period and Length of probationary period. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 315, section 315.901 and 315.907: Probation on Initial Appointment to a Supervisory or Managerial Position. This section waived only to the extent necessary to replace grade with "pay band level."

Part 316, sections 316.301, 316.303, and 316.304: Term Employment. (These sections are waived to allow modified term appointments as described in this **Federal Register** notice.)

Part 332, sections 332.401 and 332.404: Order on Registers and Order of Selection from Certificates. (These sections are waived to the extent necessary to allow: (1) No rating and ranking when there are 15 or fewer qualified applicants and no preference eligibles; (2) the hiring and appointment authorities as described in this **Federal Register** notice; and (3) elimination of the "rule of three."

Part 335, section 335.103(c)(1) i and ii: Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures or numerous short-term renewals.

Part 337, section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Part 340, subpart A, subpart B, and subpart C: Other than Full-Time Career Employment. (These subparts are waived to the extent necessary to allow a Volunteer Emeritus Corps.)

Part 351, Reduction in Force. This part is waived to the extent necessary to allow provisions of the RIF plan as described in this **Federal Register** notice. In accordance with this FR, TARDEC will define the competitive area, retention standing, and displacement limitations. Specific waivers include:

Part 351.402(b): Competitive area. Waived to expand the definition of a competitive area.

Part 351, section 351.504: Credit for performance. Waived as necessary to revise the method for adding years of service based on performance; to allow for single round of competition; and modified displacement.

Part 351, sections 351.601–351.608: Release from Competitive Level. Waived order of release from a competitive level based upon augmented service performance.

Part 351, section 351.701: Assignment involving displacement. Waived to the extent that bump and retreat rights are

limited to one pay band with the exception of 30 percent preference eligibles who are limited to two pay bands (or equivalent of five GS grades); to limit the assignment rights of employees with an unacceptable current rating of record to a position held by another employee with an unacceptable rating of record; and to modify assignment rights to allow for a single round of competition.

Part 410, section 410.309: Agreements to continue in service. Waived to the extent necessary to allow the TARDEC Director to determine requirements related to continued service agreements, including employees under the Student Career Experience Program who have received tuition assistance.

Part 430, subpart B: Performance Appraisal for GS and Certain Other Employees. Waived to the extent necessary to be consistent with the demonstration project's CCAS system.

Part 430, section 430.208(a)(1) and (2): Rating Performance. Waived to allow presumptive ratings for new employees hired 90 days or less before the end of the appraisal cycle or for other situations not providing adequate time for an appraisal

Part 432, sections 432.101–432.105: Regarding performance based reduction in grade and removal actions. These sections are waived to the extent necessary to: (1) Replace grade with "pay band;" (2) exclude reductions in pay band level not accompanied by a reduction in pay; and (3) allow provisions of CCAS. For employees who are reduced in pay band level without a reduction in pay, sections 432.105 and 432.106 (a) do not apply.

Part 451, subpart A, section 451.103(c)(2): Waived with respect to performance awards under the TARDEC CCAS.

Part 451, Sections 451.106(b) and 451.107(b): Awards. Waived to permit TARDEC to approve awards up to $25,000 for individual employees.

Part 511, subpart A: General Provisions and subpart B: Coverage of the GS. Waived to the extent necessary to allow for the demonstration project classification system and pay banding structure.

Part 511, section 511.601: Applicability of regulations. Classification appeals modified to the extent that white collar positions established under the project plan, although specifically excluded from title 5 CFR, are covered by the classification appeal process outlined in this FRN section III.B.5, as amended below.

Part 511, section 511.603(a): Right to appeal. Waived to the extent necessary to substitute pay band for grade.

Part 511, section 511.607(b): Non-Appealable Issues. Add to the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate occupational families and the demonstration project classification criteria.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements.

Part 531, subparts B: Determining Rate of Basic Pay. Waived to the extent necessary to allow for pay setting and CCAS under the provisions of the demonstration project.

Part 531, subparts D and E: Within-Grade Increases and Quality Step Increases. Waived in its entirety.

Part 531, subpart F: Locality-Based Comparability Payments. Waived to the extent necessary to allow: (1) Demonstration project employees, except employees in Pay Band V of the E&S occupational family, to be treated as GS employees; and (2) base rates of pay under the demonstration project to be treated as scheduled annual rates of pay.

Part 536: Grade and Pay Retention: These sections waived to the extent necessary to: (1) Replace grade with "pay band;" (2) allow Demonstration project employees to be treated as GS employees; and (3) to allow provisions of this **Federal Register** notice pertaining to pay band and pay retention.

Part 550, sections 550.105 and 550.106: Bi-weekly and annual maximum earnings limitations. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the applicable special rate in applying the pay cap provisions in 5 U.S.C. 5547.

Part 550, section 550.703: Definitions. Waived to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level."

Part 550, section 550.902: Definitions. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees.

Part 575, subparts A, B, and C: Recruitment, Relocation, and Retention Incentives. Waived to the extent necessary to allow: (1) Employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the GS; (2) Occupational Family relocation incentives to new SCEP students; and (3) relocation incentives to SCEP students whose worksite is in a different geographic location than that of the college enrolled.

Part 575, subpart D: Supervisory Differentials. Subpart D is waived in its entirety.

Part 591, subpart B: Cost-of-Living Allowance and Post Differential—Non-foreign Areas. Waived to the extent necessary to allow: (1) Demonstration project employees to be treated as employees under the GS.

Part 752, sections 752.101, 752.201, 752.301 and 752.401: Principal statutory requirements and Coverage. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 752, section 752.401: Coverage. Waived to the extent necessary to replace grade with pay band and to provide that a reduction in pay band level is not an adverse action if it results from the employee's rate of base pay being exceeded by the minimum rate of base pay for his/her pay band.

Part 752, section 752.401(a)(4): Coverage. Waived to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from GS special rates or NSPS Targeted Local Market Supplements to demonstration project pay, as long as total pay is not reduced; and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position or decreases in the amount of a supervisory or team leader pay adjustment based on the annual review.

Appendix A: TARDEC Employees by Duty Location

[Total excludes SES, ST, and Wage Grade]

Duty location	Employees	Servicing personnel office
TARDEC Warren, MI	1093	NE Region.
Matrixed to PEO's	312	NE Region.
York, PA	1	NE Region.
New Cumberland, PA	11	NE Region.
Selfridge AFB, MI	1	NE Region.
Ft. Hood, TX	2	NE Region.
Ft. Bragg, NC	1	NE Region.
Ft. Lewis, WA	1	NE Region.
Ft. Hueneme, CA	2	NE Region.
Alexandria, VA	1	NE Region.
Ft. Benning, GA	1	NE Region.
McClean, VA	1	NE Region.
Total All Employees	1427	

Appendix B: Occupational Series by Occupational Family

Engineering & Science

0801 General Engineering and Architecture Series
0803 Safety Engineering Series
0806 Materials Engineering Series
0819 Environmental Engineering Series
0830 Mechanical Engineering Series
0850 Electrical Engineering Series
0854 Computer Engineering Series
0855 Electronics Engineering Series
0858 Bioengineering and Biomedical Engineering Series
0861 Aerospace Engineering Series
0893 Chemical Engineering Series
0896 Industrial Engineering Series
0899 General Engineering Student Trainee Series
1301 General Physical Science Series
1306 Health Physics Series
1310 Physics Series
1320 Chemistry Series
1321 Metallurgy Series
1399 Physical Science Student Trainee Series
1501 General Mathematics and Statistics Series
1515 Operations Research Series
1520 Mathematics Series
1550 Computer Science Series
1599 Mathematics and Statistics Student Trainee Series

Business/Technical

0018 Safety and Occupational Health Management Series
0301 Miscellaneous Administration and Program Series
0340 Management Series
0341 Administrative Officer Series
0342 Support Services Administration Series
0343 Management and Program Analysis Series
0346 Logistics Management Series
0501 Financial Administration and Program Series
0510 Accounting Series
0802 Engineering Technical Series
0856 Electronics Technical Series
0895 Industrial Engineering Technical Series
0905 General Attorney Series
0950 Paralegal Specialist Series
1000 Information and Arts Group Series
1035 Public Affairs Series
1071 Audiovisual Production Series
1083 Technical Writing and Editing Series
1084 Visual Information Series
1100 Business and Industry Series
1102 Contracting Series
1222 Patent Attorney Series
1311 Physical Science Technician Series
1410 Librarian Series
1412 Technical Information Services Series
1670 Equipment Services Series
1702 Education and Training Technician Series
1712 Training Instructor Series
1910 Quality Assurance Series
2032 Packaging Series
2210 Information Technology Management Series

General Support

0303 Miscellaneous Clerk and Assistant Series
0318 Secretary Series
0326 Office Automation Clerical and Assistance Series
0335 Computer Clerk and Assistant Series
0344 Management and Program Clerical and Assistance Series

Appendix C: Contribution-Based Compensation and Appraisal System (CCAS) Factors

CAREER PATH 1: ENGINEERING AND SCIENCE PROFESSIONAL

FACTOR 1: PROBLEM SOLVING

FACTOR DESCRIPTION: This factor describes/captures personal and organizational problem-solving results.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Completed work meets projects/programs objectives. Flexibility, adaptability, and decisiveness are exercised appropriately. Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Performs activities on a task; assists supervisor or other appropriate personnel.	• Scope/Impact.
• Resolves routine problems within established guidelines	• Complexity/Difficulty.
• Independently performs assigned tasks within area of responsibility; refers situations to supervisor or other appropriate personnel when existing guidelines do not apply.	• Independence.
• Takes initiative in determining and implementing appropriate procedures	• Creativity.
Level II:	
• Plans and conducts functional technical activities for projects/programs	• Scope/Impact.
• Identifies, analyzes, and resolves complex/difficult problems	• Complexity/Difficulty.
• Independently identifies and resolves conventional problems which may require deviations from accepted policies or instructions.	• Independence.

Level descriptors	Discriminators
• Adapts existing plans and techniques to accomplish complex projects/programs. Recommends improvements to the design or operation of systems, equipment, or processes.	• Creativity.
Level III:	
• Independently defines, directs, or leads highly challenging projects/programs. Identifies and resolves highly complex problems not susceptible to treatment by accepted methods.	• Scope/Impact.
• Develops, integrates, and implements solutions to diverse, highly complex problems across multiple areas and disciplines.	• Complexity/Difficulty.
• Anticipates problems, develops sound solutions and action plans to ensure program/mission accomplishment.	• Independence.
• Develops plans and techniques to fit new situations to improve overall program and policies. Establishes precedents in application of problem-solving techniques to enhance existing processes.	• Creativity.
Level IV:	
• Defines, establishes, and directs organizational focus (on challenging and highly complex project/programs). Identifies and resolves highly complex problems that cross organizational boundaries and promulgates solutions. Resolution of problems requires mastery of the field to develop new hypotheses or fundamental new concepts.	• Scope/Impact.
• Assesses and provides strategic direction for resolution of mission critical problems, policies, and procedures.	• Complexity/Difficulty.
• Works at senior level to define, integrate, and implement strategic direction for vital programs with long-term impact on large numbers of people. Initiates actions to resolve major organizational issues. Promulgates innovative solutions and methodologies.	• Independence.
• Works with senior management to establish new fundamental concepts and criteria and stimulate the development of new policies, methodologies, and techniques. Converts strategic goals into programs or policies.	• Creativity.

FACTOR 2: TEAMWORK/COOPERATION

FACTOR DESCRIPTION: This factor, applicable to all teams, describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Works with others to accomplish routine tasks	• Scope of Team Effort.
• Contributes ideas in own area of expertise. Interacts cooperatively with others	• Contribution to Team.
• Regularly completes assignments in support of team goals	• Effectiveness.
Level II:	
• Works with others to accomplish projects/programs	• Scope of Team Effort.
• Uses varied approaches to resolve or collaborate on projects/programs issues. Facilitates cooperative interactions with others.	• Contribution to Team.
• Guides/supports others in executing team assignments. Proactively functions as an integral part of the team.	• Effectiveness.
Level III:	
• Works with others to accomplish complex projects/programs	• Scope of Team Effort.
• Applies innovative approaches to resolve unusual/difficult issues significantly impacting important policies or programs. Promotes and maintains environment for cooperation and teamwork.	• Contribution to Team.
• Leads and guides others in formulating and executing team plans. Expertise is sought by peers	• Effectiveness.
Level IV:	
• Leads/guides/mentors workforce in dealing with complex problems	• Scope of Team Effort.
• Solves broad organizational issues. Implements strategic plans within and across organizational components. Ensures a cooperative teamwork environment.	• Contribution to Team.
• Leads/guides workforce in achieving organizational goals. Participates on high-level teams. Is sought out for consultation.	• Effectiveness.

FACTOR 3: CUSTOMER RELATIONS

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels):

Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Independently carries out routine customer requests	• Breadth of Influence.
• Participates as a team member to meet customer needs	• Customer Needs.
• Interacts with customers on routine issues with appropriate guidance	• Customer Interaction Level.
Level II:	
• Guides the technical/functional efforts of individuals or team members as they interact with customers	• Breadth of Influence.
• Initiates meetings and interactions with customers to understand customer needs/expectations	• Customer Needs.
• Interacts independently with customers to communicate information and coordinate actions	• Customer Interaction Level.
Level III:	
• Guides and integrates functional efforts of individuals or teams in support of customer interaction. Seeks innovative approaches to satisfy customers.	• Breadth of Influence.
• Establishes customer alliances, anticipates and fulfills customer needs, and translates customer needs to programs/projects.	• Customer Needs.
• Interacts independently and proactively with customers to identify and define complex/difficult problems and to develop and implement strategies or techniques for resolving program/project problems (*e.g.,* determining priorities and resolving conflict among customers' requirements).	• Customer Interaction Level.
Level IV:	
• Leads and manages the organizational interactions with customers from a strategic standpoint	• Breadth of Influence.
• Works to assess and promulgate political, fiscal, and other factors affecting customer and program/project needs. Works with customer at management levels to resolve problems affecting programs/projects (*e.g.,* problems that involve determining priorities and resolving conflicts among customers' requirements).	• Customer Needs.
• Works at senior level to stimulate customer alliances for program/project support. Stimulates, organizes, and leads overall customer interactions.	• Customer Interaction Level.

FACTOR 4: LEADERSHIP/SUPERVISION

FACTOR DESCRIPTION: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Takes initiative in accomplishing assigned tasks	• Leadership Role.
• Provides inputs to others in own technical/functional area	• Breadth of Influence.
• Seeks and takes advantage of developmental opportunities	• Mentoring/Employee Development.
Level II:	
• Actively contributes as a team member/leader; provides insight and recommends changes or solutions to problems.	• Leadership Role.
• Proactively guides, coordinates, and consults with others to accomplish projects	• Breadth of Influence.
• Identifies and pursues individual/team development opportunities	• Mentoring/Employee Development.
Level III:	
• Provides guidance to individuals/teams; resolves conflicts. Considered a functional/technical expert by others in the organization; is regularly sought out by others for advice and assistance.	• Leadership Role.
• Defines, organizes, and assigns activities to accomplish projects/programs goals. Guides, motivates, and oversees the activities of individuals and teams with focus on projects/programs issues.	• Breadth of Influence.
• Fosters individual/team development by mentoring. Pursues or creates training development programs for self and others.	• Mentoring/Employee Development.
Level IV:	
• Establishes and/or leads teams to carry out complex projects or programs. Resolves conflicts. Creates climate where empowerment and creativity thrive. Recognized as a technical/functional authority on specific issues.	• Leadership Role.
• Leads, defines, manages, and integrates efforts of several groups or teams. Ensures organizational mission and program success.	• Breadth of Influence.
• Fosters the development of other team members by providing guidance or sharing expertise. Directs assignments to encourage employee development and cross-functional growth to meet organizational needs. Pursues personal professional development.	• Mentoring/Employee Development.

FACTOR 5: COMMUNICATION

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used

individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Communicates routine task status/results as required	• Level of Interaction (Audience).
• Provides timely data and written analyses for input to management/technical reports or contractual documents.	• Written.
• Explains status/results of assigned tasks	• Oral.
Level II:	
• Communicates team or group tasking results, internally and externally, at peer levels	• Level of Interaction (Audience).
• Writes, or is a major contributor to, management/technical reports or contractual documents	• Written.
• Presents informational briefings	• Oral.
Level III:	
• Communicates project or program results to all levels, internally and externally	• Level of Interaction (Audience).
• Reviews and approves, or is a major contributor to/lead author of, management reports or contractual documents for external distribution. Provides inputs to policies.	• Written.
• Presents briefings to obtain consensus/approval	• Oral.
Level IV:	
• Determines and communicates organizational positions on major projects or policies to senior level	• Level of Interaction (Audience).
• Prepares, reviews, and approves major reports or policies of organization for internal and external distribution. Resolves diverse viewpoints/controversial issues.	• Written.
• Presents organizational briefings to convey strategic vision or organizational policies	• Oral.

FACTOR 6: RESOURCE MANAGEMENT

FACTOR DESCRIPTION: This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Uses assigned resources needed to accomplish tasks	• Scope of Responsibility.
• Plans individual time and assigned resources to accomplish tasks	• Planning/Budgeting.
• Effectively accomplishes assigned tasks	• Execution/Efficiency.
Level II:	
• Plans and utilizes appropriate resources to accomplish project goals	• Scope of Responsibility
• Optimizes resources to accomplish projects/programs within established schedules	• Planning/Budgeting.
• Effectively accomplishes projects/programs goals within established resource guidelines	• Execution/Efficiency.
Level III:	
• Plans and allocates resources to accomplish multiple projects/programs	• Scope of Responsibility.
• Identifies and optimizes resources to accomplish multiple projects/programs goals	• Planning/Budgeting.
• Effectively accomplishes multiple projects/programs goals within established guidelines	• Execution/Efficiency.
Level IV:	
• Develops, acquires, and allocates resources to accomplish mission goals and strategic objectives	• Scope of Responsibility.
• Formulates organizational strategies, tactics, and budget/action plan to acquire and allocate resources	• Planning/Budgeting.
• Optimizes, controls, and manages all resources across projects/programs. Develops and integrates innovative approaches to attain goals and minimize expenditures.	• Execution/Efficiency.

CAREER PATH 2: BUSINESS AND TECHNICAL SUPPORT

FACTOR 1: PROBLEM SOLVING

FACTOR DESCRIPTION: This factor describes/captures personal and organizational problem-solving.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Completed work meets project/program objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Conducts activities on a task; assists supervisors or other appropriate personnel	• Scope/Impact.
• Resolves routine problems within established guidelines	• Complexity/Difficulty.
• Works with others in solving problems with appropriate guidance	• Independence.
• Takes initiative in selecting and implementing appropriate procedures	• Creativity.
Level II:	
• Plans and conducts technical activities for projects	• Scope/Impact.
• Identifies and resolves non-routine technical problems utilizing established patterns and methods	• Complexity/Difficulty.

Level descriptors	Discriminators
• Identifies and resolves problems; adapts accepted policies, procedures, or methods with moderate guidance.	• Independence.
• Adapts existing plans and techniques to accomplish projects	• Creativity.
Level III:	
• Plans and conducts challenging and difficult technical activities for projects/programs	• Scope/Impact.
• Develops, integrates, and implements solutions to complex problems on projects/programs	• Complexity/Difficulty.
• Identifies problems; develops solutions and action plans with minimal guidance	• Independence.
• Develops plans and techniques to fit new situations	• Creativity.
Level IV:	
• Identifies and resolves complex problems that may cross functional/technical boundaries and promulgates solutions.	• Scope/Impact.
• Develops, integrates/implements solutions to diverse, complex problems which may cross multiple projects/programs or functional/technical areas.	• Complexity/Difficulty.
• Independently resolves and coordinates technical problems involving multiple projects/programs	• Independence.
• Develops plans and techniques to fit new situations and/or to address issues that cross technical/functional areas.	• Creativity.

FACTOR 2: TEAMWORK/COOPERATION

FACTOR DESCRIPTION: This factor describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Works with others to accomplish routine tasks	• Scope of Team Effort.
• Contributes ideas in own area of expertise. Interacts cooperatively with others	• Contribution to Team.
• Regularly completes assignments in support of team goals	• Effectiveness.
Level II:	
• Works with others in accomplishing projects	• Scope of Team Effort.
• Contributes ideas in own area of expertise. Facilitates cooperative interactions with others	• Contribution to Team.
• Supports others in executing team assignments. Proactively functions as an integral part of the team	• Effectiveness.
Level III:	
• Works with others to accomplish complex projects/programs	• Scope of Team Effort.
• Guides others to resolve or collaborate on complex projects/programs issues. Promotes cooperative interactions with others.	• Contribution to Team.
• Integrates technical expertise and guides activities to support team accomplishment	• Effectiveness.
Level IV:	
• Leads others to accomplish complex projects and programs	• Scope of Team Effort
• Applies innovative approaches to resolve unusual/difficult technical/management issues. Promotes and maintains environment for cooperation and teamwork.	• Contribution to Team.
• Leads and guides others in formulating and executing team plans. Expertise is sought by others	• Effectiveness.

FACTOR 3: CUSTOMER RELATIONS

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Assists customer support activities	• Breadth of Influence.
• Participates as a team member to meet customer needs	• Customer Needs.
• Interacts with customers on routine issues with appropriate guidance	• Customer Interaction Level.
Level II:	
• Actively participates with others to satisfy customer requests	• Breadth of Influence.
• Interacts with customers to respond to customer needs/expectations	• Customer Needs.
• Interacts with customers to communicate information and coordinate action	• Customer Interaction Level.
Level III:	
• Guides the technical efforts of individuals or teams as they relate with customers. Deviates from standard approaches when necessary.	• Breadth of Influence.
• Initiates meetings and interactions with customers to understand customer needs/expectations	• Customer Needs.
• Interacts independently and proactively with customers to identify/define problems and to implement solutions.	• Customer Interaction Level.

Level descriptors	Discriminators
• Level IV:	
• Leads and coordinates technical efforts of individuals or teams in support of customer interactions. Develops innovative approaches to satisfy customers.	• Breadth of Influence.
• Establishes customer alliances; anticipates and fulfills customer needs and translates customer needs to projects/programs. Organizes and leads customer interactions.	• Customer Needs.
• Interacts proactively with customers to identify and define complex/controversial problems and to develop and implement strategies or techniques for resolving projects/programs issues.	• Customer Interaction Level.

FACTOR 4: LEADERSHIP/SUPERVISION

FACTOR DESCRIPTION: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Takes initiative in accomplishing assigned tasks. Asks for assistance as appropriate	• Leadership Role.
• Provides input to others in technical/functional area	• Breadth of Influence.
• Seeks and takes advantage of developmental opportunities	• Mentoring and Employee Development.
Level II:	
• Actively contributes as team member; takes initiative to accomplish assigned projects	• Leadership Role.
• Consults and coordinates with others to complete projects within established guidelines	• Breadth of Influence.
• Identifies and pursues individual/team developmental opportunities	• Mentoring and Employee Development.
Level III:	
• Actively contributes as team member or leader. Recognized for functional/technical expertise	• Leadership Role.
• Defines, organizes, and assigns activities to accomplish goals. Guides, motivates and oversees others in accomplishing projects/programs.	• Breadth of Influence.
• Promotes developmental opportunities for self and team. Advises others to seek specific training	• Mentoring and Employee Development.
Level IV:	
• Provides guidance to individuals/teams; resolves conflicts. Serves as subject matter expert	• Leadership Role.
• Guides, motivates, and oversees multiple complex projects/programs	• Breadth of Influence.
• Directs assignments to encourage employee development and cross-technical/functional growth to meet organizational needs. Pursues self-development.	• Mentoring and Employee Development.

FACTOR 5: COMMUNICATION

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately. Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Communicates routine task/status/results as required	• Level of Interaction (Audience).
• Provides data and accurate draft documentation of assigned tasks for input to reports or documents	• Written.
• Explains status/results of assigned tasks	• Oral.
Level II:	
• Communicates team or group project status/results at equivalent levels within the agency	• Level of Interaction (Audience).
• Writes segments of management/technical reports or documents	• Written.
• Communicates group/team results	• Oral.
Level III:	
• Communicates projects/programs status/results to management	• Level of Interaction (Audience).
• Consolidates input and writes management/technical reports/documents for projects/programs	• Written.
• Presents projects/programs briefings	• Oral.
Level IV:	
• Determines and communicates projects/programs positions at senior levels	• Level of Interaction (Audience).
• Prepares, reviews, and approves management/technical reports for internal and external distribution	• Written.
• Presents projects/programs briefings to obtain consensus/approval. Represents the organization as technical subject matter expert.	• Oral.

FACTOR 6: RESOURCE MANAGEMENT

FACTOR DESCRIPTION: This factor describes/captures personal and organizational utilization of resources to accomplish the mission.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Uses assigned resources to accomplish tasks	• Scope of Responsibility.
• Plans individual time to accomplish tasks	• Planning/Budgeting.
• Effectively accomplishes assigned tasks with appropriate guidance	• Execution/Efficiency.
Level II:	
• Identifies and uses resources appropriately to accomplish projects	• Scope of Responsibility.
• Plans resources to achieve task schedules	• Planning/Budgeting.
• Independently accomplishes assigned tasks	• Execution/Efficiency.
Level III:	
• Plans and utilizes appropriate resources to accomplish projects/programs	• Scope of Responsibility.
• Optimizes resources to accomplish projects within established milestones	• Planning/Budgeting.
• Effectively accomplishes projects/programs within established resource guidelines	• Execution/Efficiency.
Level IV:	
• Plans and allocates resources to accomplish multiple project/program goals	• Scope of Responsibility.
• Identifies and optimizes resources to accomplish multiple project/program goals	• Planning/Budgeting.
• Effectively accomplishes multiple project/program goals within established thresholds. Develops innovative approaches to attain goals and minimize resource expenditures.	• Execution/Efficiency.

CAREER PATH 3: GENERAL SUPPORT

FACTOR 1: PROBLEM SOLVING

FACTOR DESCRIPTION: This factor describes/captures personal and organizational problem solving.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Completed work meets project/program objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Conducts activities on a segment of a task. Assists supervisor or other appropriate personnel	• Scope/Impact.
• Applies standard rules, procedures, or operations to resolve routine problems	• Complexity/Difficulty.
• Independently carries out routine tasks	• Independence.
• Takes initiative in selecting and implementing appropriate procedures	• Creativity.
Level II:	
• Plans and conducts administrative activities for projects	• Scope/Impact.
• Develops, modifies, and/or applies rules, procedures, or operations to resolve problems of moderate complexity/difficulty.	• Complexity/Difficulty.
• Independently plans and executes assignments; resolves problems and handles deviations	• Independence.
• Identifies and adapts guidelines for new or unusual situations	• Creativity.
Level III:	
• Plans and conducts complex administrative activities	• Scope/Impact.
• Develops rules, procedures, or operations for complex/difficult organizational tasks	• Complexity/Difficulty.
• Identifies issues and determines approaches and methods to accomplish tasks. Initiates effective actions and resolves related conflicts.	• Independence.
• Identifies issues requiring new procedures and develops appropriate guidelines	• Creativity.

FACTOR 2: TEAMWORK/COOPERATION

FACTOR DESCRIPTION: This factor describes/captures individual and organizational teamwork and cooperation.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Works with others to accomplish routine tasks	• Scope of Team Effort.
• Contributes ideas on routine procedures. Interacts cooperatively with others	• Contribution to Team.
• Regularly completes tasks in support of team goals	• Effectiveness.
Level II:	
• Works with others to accomplish tasks	• Scope of Team Effort.
• Resolves administrative problems; facilitates cooperative interactions with others	• Contribution to Team.
• Guides others and coordinates activities in support of team goals. Proactively functions as an integral part of the team.	• Effectiveness.

Level descriptors	Discriminators
Level III:	
• Works with others on complex issues/problems that may cross functional areas	• Scope of Team Effort.
• Applies expertise in resolving complex administrative issues. Promotes and maintains environment for cooperation/teamwork. Sets tone for internal/external cooperation.	• Contribution to Team.
• Leads and guides others in formulating and executing plans in support of team goals	• Effectiveness.

FACTOR 3: CUSTOMER RELATIONS

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Assists customer support activities	• Breadth of Influence.
• Meets routine customer needs	• Customer Needs.
• Interacts with customers on routine issues within specific guidelines	• Customer Interaction Level.
Level II:	
• Guides the administrative efforts of individuals or team members as they interact with customers	• Breadth of Influence.
• Independently interacts with customers to understand customer needs/expectations	• Customer Needs.
• Interacts independently with customers to communicate information and coordinate actions	• Customer Interaction Level.
Level III:	
• Identifies, defines, and guides administrative efforts in support of customer interactions; coordinates and focuses activities to support multiple customers.	• Breadth of Influence.
• Establishes customer alliances and translates needs to customer service	• Customer Needs.
• Works independently with customers at all levels to define services and resolve non-routine problems	• Customer Interaction Level.

FACTOR 4: LEADERSHIP/SUPERVISION

FACTOR DESCRIPTION: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Takes initiative in accomplishing assigned tasks Asks for assistance as appropriate	• Leadership Role.
• Provides input in administrative/functional area	• Breadth of Influence.
• Seeks and takes advantage of developmental opportunities	• Mentoring and Employee Development.
Level II:	
• Actively contributes as team member or leader; takes initiative to accomplish assigned projects	• Leadership Role.
• Guides others in accomplishing projects	• Breadth of Influence.
• Identifies and pursues individual/team developmental opportunities	• Mentoring and Employee Development.
Level III:	
• Provides guidance to individuals/teams; resolves conflicts. Expertise solicited by others	• Leadership Role.
• Guides and accounts for results or activities of individuals, teams, or projects	• Breadth of Influence.
• Promotes individual/team development; leads development of training programs for self and others	• Mentoring and Employee Development.

FACTOR 5: COMMUNICATION

FACTOR DESCRIPTION: This factor describes/captures the effectiveness of oral/written communications.

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Communicates routine task/status results as required	• Level of Interaction (Audience).
• Writes timely and accurate draft documentation	• Written.
• Explains status/results of assigned tasks	• Oral.
Level II:	
• Interprets and communicates administrative procedures within immediate organization	• Level of Interaction (Audience).
• Prepares, coordinates, and consolidates documents, reports, or briefings	• Written.
• Communicates/presents internal administrative/functional procedures and tasks internally and externally.	• Oral.
Level III:	
• Develops and advises on administrative procedures and communicates them to all levels, both internally and externally.	• Level of Interaction (Audience).
• Prepares, reviews, and/or approves documents, reports, or briefings	• Written.
• Explains and/or communicates administrative/functional procedures at all levels	• Oral.

FACTOR 6: RESOURCE MANAGEMENT

FACTOR DESCRIPTION: This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

EXPECTED PERFORMANCE CRITERIA (Applicable to all contributions at all levels): Work is timely, efficient, and of acceptable quality. Available resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
Level I:	
• Uses assigned resources to accomplish tasks	• Scope of Responsibility.
• Plans individual time and assigned resources to accomplish tasks	• Planning/Budgeting.
• Effectively accomplishes assigned tasks	• Execution/Efficiency.
Level II:	
• Identifies and uses resources to accomplish projects	• Scope of Responsibility.
• Plans resources to achieve project schedules	• Planning/Budgeting.
• Effectively accomplishes projects within established resource guidelines	• Execution/Efficiency.
Level III:	
• Plans, acquires, and allocates resources to accomplish objectives	• Scope of Responsibility.
• Coordinates resources across projects	• Planning/Budgeting.
• Optimizes resource utilization across projects	• Execution/Efficiency.

Appendix D: Intervention Model

Intervention	Expected effects	Measures	Data sources
1. Compensation			
a. Pay banding	Increased organizational flexibility	Perceived flexibility	Attitude survey.
	Reduced administrative workload, paper work reduction.	Actual/perceived time savings	Personnel office data, PME results, attitude survey.
	Advanced in-hire rates	Starting salaries of banded v. non-banded employees.	Workforce data.
	Slower pay progression at entry levels.	Progression of new hires over time by band, career path.	Workforce data.
	Increased pay potential	Mean salaries by band, group, demographics.	Workforce data.
		Total payroll costs	Personnel office data.
	Increased satisfaction with advancement.	Employee perceptions of advancement.	Attitude survey.
	Increased pay satisfaction	Pay satisfaction, internal/external equity.	Attitude survey.
	Improved recruitment	Offer/acceptance ratios; Percent declinations.	Personnel office data.
b. Conversion buy-in	Employee acceptance	Employee perceptions of equity, fairness.	Attitude survey.
		Cost as a percent of payroll	Workforce data.
c. Pay differentials/adjustments	Increased incentive to accept supervisory/team leader positions.	Perceived motivational power	Attitude survey.
2. Performance Management			
a. Cash awards/bonuses	Reward/motivate performance	Perceived motivational power	Attitude survey.

Intervention	Expected effects	Measures	Data sources
	To support fair and appropriate distribution of awards.	Amount and number of awards by group, demographics.	Workforce data.
		Perceived fairness of awards	Attitude survey.
		Satisfaction with monetary awards	Attitude survey.
b. Performance based pay progression.	Increased pay-performance link	Perceived pay-performance link	Attitude survey.
		Perceived fairness of ratings	Attitude survey.
	Improved performance feedback	Satisfaction with ratings	Attitude survey.
		Employee trust in supervisors	Attitude survey.
		Adequacy of performance feedback.	Attitude survey.
	Decreased turnover of high performers/Increased turnover of low performers.	Turnover by performance rating scores.	Workforce data.
	Differential pay progression of high/low performers.	Pay progression by performance scores, career path.	Workforce data.
	Alignment of organizational and individual performance objectives and results.	Linkage of performance objectives to strategic plans/goals.	Performance objectives, strategic plans.
	Increased employee involvement in performance planning and assessment.	Perceived involvement	Attitude survey/focus groups.
		Performance management	Personnel regulations.
c. New appraisal process	Reduced administrative burden	Employee and supervisor perceptions of revised procedures.	Attitude survey.
	Improved communication	Perceived fairness of process	Focus groups.
d. Performance development	Better communication of performance expectations.	Feedback and coaching procedures used.	Focus groups.
		Time, funds spent on training by demographics.	Personnel office data. Training records.
	Improved satisfaction and quality of workforce.	Perceived workforce quality	Attitude survey.
3. "White Collar" Classification			
a. Improved classification systems with generic standards.	Reduction in amount of time and paperwork spent on classification.	Time spent on classification procedures.	Personnel office data.
		Reduction of paperwork/number of personnel actions (classification/promotion).	Personnel office data.
	Ease of use	Managers' perceptions of time savings, ease of use.	Attitude survey.
b. Classification authority delegated to managers.	Increased supervisory authority/accountability.	Perceived authority	Attitude survey.
	Decreased conflict between management and personnel staff.	Number of classification disputes/appeals pre/post.	Personnel records.
		Management satisfaction with service provided by personnel office.	Attitude survey.
	No negative impact on internal pay equity.	Internal pay equity	Attitude survey.
c. Dual career ladder	Increased flexibility to assign employees.	Assignment flexibility	Focus groups, surveys.
	Improved internal mobility	Perceived internal mobility	Attitude survey.
	Increased pay equity	Perceived pay equity	Attitude survey.
	Flatter organization	Supervisory/non-supervisory ratios.	Workforce data.
			Attitude survey.
	Improved quality of supervisory staff.	Employee perceptions of quality or supervisory.	Attitude survey.
4. Modified RIF			
	Minimize loss of high performing employees with needed skills.	Separated employees by demographics, performance scores.	Workforce data.
			Attitude survey/focus group.
	Contain cost and disruption	Satisfaction with RIF Process	Attitude survey/focus group.
		Cost comparison of traditional vs. Modified RIF.	Personnel office/budget Data.
		Time to conduct RIF—personnel office data.	Personnel office data.

Intervention	Expected effects	Measures	Data sources
		Number of Appeals/reinstatements.	Personnel office data.
5. Hiring Authority			
a. Delegated Examining	Improved ease and timeliness of hiring process.	Perceived flexibility in authority to hire.	Attitude survey.
	Improved recruitment of employees in shortage categories.	Offer/accept ratios	Personnel office data.
		Percent declinations	Personnel office data.
		Timeliness of job offers	Personnel office data.
		GPAs of new hires, educational levels.	Personnel office data.
	Reduced administrative workload/paperwork reduction.	Actual/perceived skills	Attitude survey.
b. Term Appointment Authority	Increased capability to expand and contract workforce.	Number/percentage of conversions from modified term to permanent appointments.	Workforce data.
			Personnel office data.
c. Flexible Probationary Period	Expanded employee assessment	Average conversion period to permanent status.	Workforce data.
			Personnel office data.
		Number/percentage of employees completing probationary period.	Workforce data.
			Personnel office data.
		Number of separations during probationary period.	Workforce data.
			Personnel office data.
d. Distinguish Scholastic Achievement Appointment.	Improved ease and timeliness of hiring process.	Perceived flexibility in authority to hire.	Attitude survey.
	Improved recruitment of employees in shortage categories.	Offer/accept ratios	Personnel office data.
		Percent declinations	Personnel office data.
		Timeliness of job offers	Personnel office data.
		GPAs of new hires, educational levels.	Personnel office data.
	Reduced administrative workload/paperwork reduction.	Actual/perceived skills	Attitude survey.
6. Expanded Development Opportunities			
a. Sabbaticals	Expanded range of professional growth and development.	Number and type of opportunities taken.	Workforce data.
	Application of enhanced knowledge and skills to work product.	Employee and supervisor perceptions.	Attitude survey.
b. Critical Skills Training	Improved organizational effectiveness.	Number and type of training	Personnel office data.
		Placement of employees, skills imbalances corrected.	Personnel office data.
		Employee and supervisor perceptions.	Attitude survey.
		Application of knowledge gained from training.	Attitude survey/focus group.
7. Combination Of All Interventions			
All	Improved organizational effectiveness.	Combination of personnel measures.	All data sources.
	Improved management of workforce.	Employee/Management job satisfaction (intrinsic/extrinsic).	Attitude survey.
	Improved planning	Planning procedures	Strategic planning documents.
		Perceived effectiveness of planning procedures.	Attitude survey.
	Improved cross functional coordination.	Actual/perceived coordination	Organizational charts.
	Increased product success	Customer satisfaction	Customer satisfaction surveys.
	Cost of innovation	Project training/development costs (staff salaries, contract cost, training hours per employee).	Demo project office records.
			Contract documents.

Intervention	Expected effects	Measures	Data sources
8. Context			
Regionalization	Reduced servicing ratios/costs	HR servicing ratios	Personnel office data, workforce data.
		Average cost per employee served.	Personnel office data, workforce data.
	No negative impact on service quality.	Service quality, timeliness	Attitude survey/focus groups.

[FR Doc. 2011–4932 Filed 3–4–11; 8:45 am]
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