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FEDERAL REGISTER

Vol. 76 Friday,
No. 58 March 25, 2011

Pages 16683–17018

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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RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2008–0112]

RIN 0579–AD31

Importation of Horses From Contagious Equine Metritis-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations regarding the importation of horses from countries affected with contagious equine metritis (CEM) by incorporating an additional certification requirement for imported horses 731 days of age or less and adding new testing protocols for test mares and imported stallions and mares more than 731 days of age. We are taking these actions in response to incidents that prompted an investigation by an expert review panel, which identified specific weaknesses in the current regulations. This action will provide additional safeguards against the introduction of CEM through the importation of affected horses.

DATES: This interim rule is effective March 25, 2011. We will consider all comments that we receive on or before May 24, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0112* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2008–0112, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0112.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Ellen Buck, Senior Staff Veterinarian, Equine Imports, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 36, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock. Subpart C—Horses, §§ 93.300 through 93.326, pertains to the importation of horses into the United States. Sections 93.301 and 93.304 of the regulations contain specific provisions for the importation of horses from regions affected with contagious equine metritis (CEM), which is a highly contagious venereal disease of horses and other equines caused by an infection with the bacterium *Taylorella equigenitalis.*

The regulations provide that some types of horses may be imported from CEM-affected regions without restriction. For instance, weanlings and yearlings are exempt under § 93.301(c)(2)(iii). Other horses are allowed to be imported from CEM-affected regions provided they meet certain requirements that include quarantine, testing, and treatment as provided under § 93.301(d), (e), and (f). Horses that fall under this category include Spanish Pure Breed horses from Spain; racing thoroughbreds from Germany, France, Ireland, and the United Kingdom; stallions and mares over 731 days of age; and horses that are imported under special provisions for temporary importation for competition or entertainment purposes.

Approximately 2,500 horses imported from CEM-affected regions undergo CEM quarantine in the United States each year. Over the past 10 years, despite current requirements for pre-import CEM testing in the country of origin, more than 28 CEM-positive horses have been identified during quarantine in the United States.

In 2006, a private veterinarian in the United States detected a *T. equigenitalis* infection during a routine breeding soundness exam of an imported stallion that had been released from CEM quarantine in 2004 after testing negative for CEM. The epidemiological investigation that followed detected two other infected stallions on the same premises. This incident jeopardized the CEM-free status of the United States and had a significant impact on U.S. horse exports. In 2007, in response to this incident, APHIS' Veterinary Services program initiated a review and assessment by Federal, State, and industry officials of U.S. equine import activities to identify any improvements to testing procedures that may be necessary to better mitigate the risk of a CEM-positive horse being released into the U.S. equine population.

A second incident indicating a need to strengthen the CEM regulations occurred in April 2008 when an imported mare undergoing CEM quarantine demonstrated positive results for CEM on a complement-fixation (CF) test, which has not been required for imported mares under the regulations; the required sampling of the clitoral sinuses and clitoral fossa of the mare had shown negative results for *T. equigenitalis.* The attending veterinarian administered the CF test because she knew about the recommendations that followed from the review and assessment of the 2006 incident.

In December 2008, a U.S. origin stallion with no history of residence in a CEM-affected region was undergoing routine testing for semen export, and cultured positive for CEM. APHIS initiated an epidemiologic investigation

to identify other potentially infected horses. Ultimately 23 stallions and 5 mares were identified as infected. An additional 250 stallions and 718 mares were identified as exposed to positive horses. All infected or exposed horses required culturing and treatment at their owners' expense. The suspected source of the outbreak was a stallion imported from Denmark in late 2000 whose CEM infection was not detected on import testing. Because of the outbreak, some countries no longer recognized the United States as CEM-free and consequently placed restrictions on U.S. equine exports. The 2006 and 2008 incidents indicate that the regulations that have been in place are inadequate to identify all imported horses infected with *T. equigenitalis.*

Given the incidents noted above, we have determined that the following regulatory changes are necessary and need to be implemented immediately in order to prevent the potential introduction and spread of CEM in the United States.

Exemption for Weanlings and Yearlings

The regulations in § 93.301(c)(2)(iii) have exempted weanlings or yearlings (defined as not more than 731 days of age) from CEM quarantine requirements when their age is certified on the import health certificate required under § 93.314(a). The regulations have provided for this exemption because horses less than 2 years old have generally been considered too young to breed and therefore pose only a minimal risk of entering the United States with a venereal disease such as CEM. However, this assumption is now in question because APHIS has identified imported mares 731 days or less of age that were pregnant and therefore at risk of CEM infection.

While retaining the current certification-of-age requirement, we are limiting the exemption from CEM-related restrictions to weanlings and yearlings that have never been bred, and we are requiring that their breeding status be certified on the import health certificate required under § 93.314(a). This change to the regulations provides an additional safeguard against the spread of CEM to the U.S. horse population.

Imported Stallions

Because stallions do not show clinical signs of CEM after becoming exposed to the bacterium *T. equigenitalis,* diagnosis of CEM cannot be based on clinical signs alone. Furthermore, culture tests do not always detect *T. equigenitalis.* The stallion can look normal and test negative for *T. equigenitalis,* but still infect the mare to which it is bred naturally or by artificial insemination. Therefore, the regulations under § 93.301(e) provide that stallions over 731 days of age from CEM-affected regions are to be bred to two test mares.

Specifically, the regulations in paragraph (e)(3)(i) have stated that upon arrival at a CEM facility in an approved State, a set of specimens must be taken from a stallion's prepuce, urethral sinus, and fossa glandis, and that after negative culture results have been obtained, the stallion must be test bred to two test mares. After being test bred, a stallion that cultured negative prior to being test bred has not been required to undergo another culture to test for *T. equigenitalis* unless a test mare tested positive for CEM, in which case the stallion would be treated for CEM and the testing process begun again.

We are amending paragraph (e)(3)(i) of § 93.301 to require a fourth specimen to be taken from the stallion's distal urethra and to increase the number of required sets of specimens (a set consists of one culture swab from each location) from imported stallions from one set to three sets at each of the four sites, all taken within a 12-day period with a minimum of 72 hours between each set. At least two of the three sets of specimens must be collected from the stallion, with negative results, before the stallion is bred to two test mares. If the test mares test negative for CEM after breeding, and if all of the stallion's culture specimens test negative for CEM, then the stallion will be released from quarantine.

These changes to the regulations will increase the likelihood of detecting *T. equigenitalis* in imported stallions, thereby reducing the risk that imported stallions will be released from quarantine with undiagnosed CEM infections.

Test Mares

Test mares are mares used to test stallions for CEM. To qualify to become a test mare, each mare must test negative for CEM as provided under § 93.301(e)(4). The regulations in § 93.301(e)(3)(i)(B) have required that the mucosal surfaces of the clitoral sinuses and clitoral fossa of a test mare must be cultured for *T. equigenitalis* on the third, sixth, and ninth days after breeding with an imported stallion in CEM quarantine. To increase the likelihood of detecting CEM in test mares, we are amending the regulations to require that either the distal cervix or endometrium be cultured for CEM in addition to the clitoral sinuses and clitoral fossa. We are also extending the allowable timeframe in (e)(4)(ii) to complete all three culture sets from the current 7-day period to a 12-day period, with specimens collected anytime between the third and the fourteenth day after breeding, with a minimum of 72 hours between each set. The additional time allowed to collect all culture samplings was added at the request of the veterinarians, because the 7-day timeframe did not allow any flexibility in scheduling, since samples generally could not be shipped or processed on weekends. Extending the timeframe from 7 days to 12 days to account for the laboratory's hours of operations will help decrease testing delays caused by unusable samples.

Furthermore, the regulations in paragraph (e)(3)(i)(B) have required the blood sample for the required CF test to be drawn from the test mare on the fifteenth day after breeding. We are amending the paragraph to require that a test mare's blood be drawn for a CF test on the twenty-first day after breeding. This amendment aligns our requirements with the World Organization for Animal Health's (OIE) Manual of Diagnostic Tests,[1] which recommends screening mares between 21 and 45 days after breeding.

Imported Mares

Once an imported mare has arrived at a CEM quarantine facility in an approved State, the regulations in § 93.301(e)(5)(i) have required specimens to be collected from the mucosal surfaces of the clitoral sinuses and clitoral fossa on days 1, 4, and 7 during a 7-day period with all culture sets received by an approved laboratory within 48 hours of collection. To increase the likelihood of detecting CEM in these imported mares, we are adding a requirement, as we are doing for test mares, to collect specimens from either the distal cervix or the endometrium in nonpregnant mares in addition to the specimens taken from the mucosal surfaces of the clitoral sinuses and clitoral fossa. To help avoid test delays and unusable samples due to facility and laboratory hours of operations, we are extending the timeframe to complete sampling from the current 7-day period to a 12-day period with no less than 72 hours between each set.

In addition, we are now requiring that an imported mare be given a CF test upon arrival at a State's CEM quarantine facility. CF testing will allow identification of antibodies from any recent exposure to CEM and provide

[1] To view the OIE *Terrestrial Animal Health Code,* go to *http://www.oie.int/eng/normes/mcode/en_sommaire.htm.*

supplementary information concerning the mare's CEM status.

Spanish Pure Breed Horses and Thoroughbred Horses; Horses Temporarily Imported for Competition or Entertainment Purposes

To reflect the changes discussed above, we are amending paragraph (d)(1)(ii)(D) in § 93.301 to require that Spanish Pure Breed horses from Spain and thoroughbred horses over 731 days of age from France, Germany, Ireland, and the United Kingdom, test negative for CEM based on the culturing of three sets of specimens. For female horses, the specimens must be collected from the mucosal surfaces of the clitoral fossa, distal cervix or endometrium, and the clitoral sinuses; for any male horses, the specimens must be collected from the surfaces of the prepuce, the urethral sinus, the distal urethra, and the fossa glandis, including the diverticulum of the fossa glandis. For both female and male horses, the sets of specimens must be collected on three separate occasions within a 12-day period with no less than 72 hours between each set, and the last of these sets of specimens must be collected within 30 days prior to the exportation of the horses to the United States. All specimens must be collected by a licensed veterinarian who either is, or is acting in the presence of, the veterinarian signing the required health certificate.

We are making similar changes to paragraph (f)(3) in § 93.301, which contains special provisions for temporary importation of horses for competition or entertainment purposes. Specifically, we will require that such horses be accompanied by a health certificate that certifies that cultures negative for CEM were obtained from three sets of specimens. For female horses, the specimens must be collected from the mucosal surfaces of the clitoral fossa and clitoral sinuses, with one set of specimens including a specimen from the surfaces of the distal cervix or endometrium; for male horses, the specimens must be collected from the surfaces of the prepuce, the urethral sinus, the distal urethra, and the fossa glandis, including the diverticulum of the fossa glandis. For both female and male horses, the sets of specimens must be collected on three separate occasions within a 12-day period with no less than 72 hours between each set, and the last of these sets of specimens must be collected within 30 days prior to the exportation of horses to the United States. All specimens must be collected by a licensed veterinarian who either is, or is acting in the presence of, the veterinarian signing the certificate.

These changes, which represent an increase in the number of specimens that must be collected, are consistent with the changes we are making for other mares and stallions being imported from CEM-affected regions to the United States and will provide additional safeguards against the spread of CEM to the U.S. horse population.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction and spread of CEM into the equine population of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register.** The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

We have prepared an initial regulatory flexibility analysis for this action. The analysis identifies U.S. importers of mares and stallions from CEM countries as the small entities most likely to be affected by this action and considers the costs associated with complying with new requirements. Based on the information presented in the analysis, we expect that U.S. importers will experience a slight increase in quarantine and treatment costs as a result of this action. The overall impact of the additional costs for the horse industry is not expected to be significant, given the relatively small number of horses imported from CEM countries.

We invite comment on our initial regulatory flexibility analysis, which is posted with this interim rule on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PROUDUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 93.301 is amended as follows:

■ a. By revising paragraph (c)(2)(iii);

■ b. By revising paragraph (d)(1)(ii)(D);

■ c. In paragraph (e)(1)(iii), by adding the words "distal urethra," after the words "urethral sinus," in the second sentence;

■ d. By revising paragraphs (e)(3)(i) introductory text, (e)(3)(i)(B), (e)(4)(ii), and (e)(5)(i); and

■ e. By revising paragraphs (f)(3).

The revisions read as follows:

§ 93.301 General prohibitions; exceptions.

* * * * *

(c) * * *

(2) * * *

(iii) Weanlings or yearlings that have never been used for breeding, and whose age and breeding status are certified on the import health certificate required under § 93.314(a);

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) For Spanish Pure Breed horses and thoroughbred horses over 731 days

of age, cultures negative for CEM were obtained from three sets of specimens collected within a 12-day period from the mucosal surfaces of the clitoral fossa, distal cervix or endometrium, and the clitoral sinuses of any female horses and from the surfaces of the prepuce, the urethral sinus, the distal urethra, and the fossa glandis, including the diverticulum of the fossa glandis, of any male horses. For both male and female horses, the sets of specimens must be taken within a 12-day period with no less than 72 hours between each set, and the last of these sets of specimens must be collected within 30 days prior to exportation. All specimens required by this paragraph must be collected by a licensed veterinarian who either is, or is acting in the presence of, the veterinarian signing the certificate; and

* * * * *

(e) * * *

(3) * * *

(i) Once the stallion is in the approved State, three sets of specimens consisting of one culture swab from each location shall be taken from the prepuce, the urethral sinus, the distal urethra, and the fossa glandis, including the diverticulum of the fossa glandis, of the stallion and be cultured for CEM. The sets of specimens must be collected on three separate occasions within a 12-day period with no less than 72 hours between each set. No sooner than after the second set of specimens is collected and cultured for CEM with negative results, the stallion must be test bred to two test mares that meet the requirements of paragraph (e)(4) of this section. Upon completion of the test breeding:

* * * * *

(B) Each mare to which the stallion has been test bred shall be cultured for CEM from three sets of specimens from the mucosal surfaces of the clitoral fossa, clitoral sinuses, and from either the distal cervix or endometrium between the third and fourteenth day after breeding, with negative results. The sets of specimens must be collected on three separate occasions within a 12-day period with no less than 72 hours between each set. A complement fixation test for CEM must be done with negative results on the twenty-first day after the breeding.

* * * * *

(4) * * *

(ii) The test mares must be qualified prior to breeding as apparently free from CEM and may not be used for breeding from the time specimens are taken to qualify the mares as free from CEM. To qualify, each mare shall be tested with negative results by a complement fixation test for CEM, and specimens taken from each mare shall be cultured negative for CEM. For each culture, sets of specimens shall be collected on three separate occasions from the mucosal surfaces of the clitoral fossa, clitoral sinuses, and from either the distal cervix or endometrium within a 12-day period with no less than 72 hours between each set.

* * * * *

(5) * * *

(i) Once the mare is in the approved State, a complement fixation test for CEM must be done, and three sets of specimens shall be collected from the mucosal surfaces of the clitoral fossa and clitoral sinuses, with one set of specimens including a specimen from the surfaces of the distal cervix or endometrium in nonpregnant mares. The sets of specimens must be collected on three separate occasions within a 12-day period with no less than 72 hours between each set. An accredited veterinarian shall collect specimens and shall submit each set of specimens to the National Veterinary Services Laboratories in Ames, IA, or to a laboratory approved by the Administrator in accordance with paragraph (i) of this section to conduct CEM cultures and tests.

* * * * *

(f) * * *

(3) At the time of importation, each horse must be accompanied by an import permit in accordance with § 93.304 and a health certificate issued in accordance with § 93.314. For horses imported in accordance with paragraph (f)(2) of this section, the health certificate must also certify that cultures negative for CEM were obtained from three sets of specimens collected from the mucosal surfaces of the clitoral fossa and clitoral sinuses, with one set of specimens including a specimen from the surfaces of the distal cervix or endometrium, of any female horses and from the surfaces of the prepuce, the urethral sinus, the distal urethra, and the fossa glandis, including the diverticulum of the fossa glandis, of any male horses. For both female and male horses, the sets of specimens must be collected on three separate occasions within a 12-day period with no less than 72 hours between each set, and the last of these sets of specimens must be collected within 30 days prior to exportation. All specimens required by this paragraph must be collected by a licensed veterinarian who either is, or is acting in the presence of, the veterinarian signing the certificate.

* * * * *

Done in Washington, DC, this 21st day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–7098 Filed 3–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30773; Amdt. No. 3417]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 25, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 25, 2011.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. 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.*

Availability—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2.The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082 Oklahoma City, OK 73125) *telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on March 4, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 Vor, Vor/DME, Vor or TACAN, and Vor/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
7–Apr–11	KY	Lexington	Blue Grass Field	1/3779	2/7/11	This NOTAM, Published in TL 11–07, is hereby rescinded in its entirety
7–Apr–11	MS	Bay St. Louis	Stennis Intl	1/4120	2/7/11	This NOTAM, Published in TL 11–07, is hereby rescinded in its entirety
7–Apr–11	RI	Providence	Theodore Francis Green State.	1/3300	2/17/11	VOR/DME RWY 34, Amdt 5D
7–Apr–11	MI	Flint	Bishop Intl	1/3663	2/8/11	ILS or LOC RWY 9, Amdt 22A
7–Apr–11	OK	Oklahoma City	Sundance Airpark	1/3673	2/8/11	RNAV (GPS) RWY 17, Orig–A
7–Apr–11	OK	Oklahoma City	Sundance Airpark	1/3674	2/8/11	RNAV (GPS) RWY 35, Orig–A
7–Apr–11	OK	Oklahoma City	Sundance Airpark	1/3675	2/8/11	LOC RWY 17, Orig–C
7–Apr–11	OK	Oklahoma City	Sundance Airpark	1/3676	2/8/11	VOR RWY 17, Amdt 1B

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
7–Apr–11	NH	Lebanon	Lebanon Muni	1/3766	2/17/11	RNAV (GPS) RWY 7, Orig–A
7–Apr–11	NH	Lebanon	Lebanon Muni	1/3767	2/17/11	VOR/DME RWY 7, Amdt 1A
7–Apr–11	OH	Cleveland	Cuyahoga County	1/3852	2/8/11	ILS or LOC RWY 24, Amdt 14
7–Apr–11	WI	Marshfield	Marshfield Muni	1/4196	2/7/11	RNAV (GPS) RWY 16, Orig
7–Apr–11	ND	Minot	Minot Intl	1/4321	2/7/11	RNAV (GPS) RWY 31, Amdt 1
7–Apr–11	VA	Richlands	Tazewell County	1/4448	2/17/11	LOC/DME RWY 25, Orig
7–Apr–11	MS	Columbus	Columbus-Lowndes County	1/4481	2/7/11	Takeoff Minimums and Obstacle DP, Orig
7–Apr–11	GA	Lagrange	Lagrange-Callaway	1/4482	2/7/11	Takeoff Minimums and Obstacle DP, Amdt 1
7–Apr–11	OK	Ardmore	Ardmore Muni	1/4504	2/7/11	ILS or LOC RWY 31, Amdt 4B
7–Apr–11	AR	Mountain Home	Ozark Regional	1/4510	2/3/11	ILS or LOC/DME RWY 5, Orig
7–Apr–11	AR	Mountain Home	Ozark Regional	1/4511	2/3/11	RNAV (GPS) RWY 5, Orig
7–Apr–11	KS	Topeka	Forbes Field	1/4556	2/14/11	ILS or LOC RWY 31, Amdt 9D
7–Apr–11	MS	Gulfport	Gulfport-Biloxi Intl	1/4571	2/3/11	RADAR–1, Amdt 6A
7–Apr–11	MS	Gulfport	Gulfport-Biloxi Intl	1/4572	2/3/11	ILS or LOC/DME RWY 32, Amdt 4A
7–Apr–11	MS	Gulfport	Gulfport-Biloxi Intl	1/4573	2/3/11	VOR/DME or TACAN RWY 32, Amdt 4A
7–Apr–11	MS	Gulfport	Gulfport-Biloxi Intl	1/4574	2/3/11	VOR RWY 32, Amdt 21A
7–Apr–11	VT	Springfield	Hartness State (Springfield)	1/4577	2/3/11	RNAV (GPS) RWY 5, Orig
7–Apr–11	PA	Butler	Butler County/K W Scholter Field.	1/4578	2/3/11	RNAV (GPS) RWY 8, Orig–B
7–Apr–11	PA	Butler	Butler County/K W Scholter Field.	1/4579	2/3/11	RNAV (GPS) RWY 26, Orig
7–Apr–11	PA	Butler	Butler County/K W Scholter Field.	1/4580	2/3/11	ILS or LOC RWY 8, Amdt 7B
7–Apr–11	FL	Orlando	Orlando Sanford Intl	1/4606	2/3/11	ILS or LOC RWY 9L, Amdt 3
7–Apr–11	FL	Orlando	Orlando Sanford Intl	1/4608	2/3/11	NDB B, Orig
7–Apr–11	FL	Orlando	Orlando Sanford Intl	1/4609	2/3/11	ILS or LOC RWY 27R, Amdt 1
7–Apr–11	FL	Orlando	Orlando Sanford Intl	1/4610	2/3/11	RNAV (GPS) RWY 9L, Amdt 2A
7–Apr–11	FL	Orlando	Orlando Sanford Intl	1/4611	2/3/11	RNAV (GPS) RWY 27R, Amdt 1A
7–Apr–11	FL	Orlando	Orlando Sanford Intl	1/4612	2/3/11	RNAV (GPS) RWY 9R, Orig–A
7–Apr–11	FL	Orlando	Orlando Sanford Intl	1/4613	2/3/11	NDB C, Orig
7–Apr–11	MA	Norwood	Norwood Memorial	1/4654	2/7/11	RNAV (GPS) RWY 35, Amdt 1A
7–Apr–11	MA	Norwood	Norwood Memorial	1/4655	2/7/11	LOC RWY 35, Amdt 10A
7–Apr–11	NC	Fayetteville	Fayetteville Rgnl/Grannis Field.	1/4656	2/7/11	RNAV (GPS) RWY 4, Amdt 1
7–Apr–11	NC	Fayetteville	Fayetteville Rgnl/Grannis Field.	1/4657	2/7/11	ILS or LOC RWY 4, Amdt 15A
7–Apr–11	MD	Friendly	Potomac Airfield	1/4671	2/8/11	Takeoff Minimums and Obstacle DP, Orig
7–Apr–11	NJ	Lumberton	Flying W	1/5190	2/8/11	RNAV (GPS) RWY 1, Orig
7–Apr–11	VA	Emporia	Emporia-Greensville Rgnl	1/5383	2/7/11	RNAV (GPS) RWY 33, Orig–A
7–Apr–11	VA	Emporia	Emporia-Greensville Rgnl	1/5384	2/7/11	LOC RWY 33, Orig–A
7–Apr–11	FL	Panama City	Northwest Florida Beaches Intl.	1/5468	2/14/11	ILS or LOC/DME RWY 16, Orig–B
7–Apr–11	KY	Paducah	Barkley Rgnl	1/5720	2/14/11	RNAV (GPS) RWY 4, Orig
7–Apr–11	KY	Paducah	Barkley Rgnl	1/5721	2/14/11	RNAV (GPS) RWY 22, Orig
7–Apr–11	KY	Paducah	Barkley Rgnl	1/5722	2/14/11	VOR/DME RWY 22, Amdt 5
7–Apr–11	TN	Nashville	Nashville Intl	1/5724	2/14/11	VOR/DME RWY 13, Amdt 13A
7–Apr–11	KY	Ashland	Ashland Rgnl	1/5824	2/14/11	VOR RWY 10, Amdt 11
7–Apr–11	KY	Ashland	Ashland Rgnl	1/5825	2/14/11	RNAV (GPS) RWY 10, Orig
7–Apr–11	KY	Ashland	Ashland Rgnl	1/5826	2/14/11	RNAV (GPS) RWY 28, Orig–A
7–Apr–11	AL	Huntsville	Huntsville Intl-Carl T Jones Field.	1/5869	2/14/11	RNAV (GPS) RWY 18R, Amdt 1
7–Apr–11	AR	Ozark	Ozark-Franklin County	1/5894	2/8/11	RNAV (GPS) RWY 4, Orig
7–Apr–11	AR	Ozark	Ozark-Franklin County	1/5895	2/8/11	VOR/DME A, Amdt 4
7–Apr–11	IL	Sparta	Sparta Community–Hunter Field.	1/5959	2/14/11	RNAV (GPS) RWY 18, Orig
7–Apr–11	AR	Hot Springs	Memorial Field	1/5976	2/14/11	ZAPLE VOR RWY 5, Amdt 4B
7–Apr–11	AR	Hot Springs	Memorial Field	1/5977	2/14/11	VOR RWY 5, Amdt 16A
7–Apr–11	AR	Hot Springs	Memorial Field	1/5978	2/14/11	RNAV (GPS) RWY 5, Amdt 1
7–Apr–11	AR	Hot Springs	Memorial Field	1/5979	2/14/11	ILS or LOC RWY 5, Amdt 15
7–Apr–11	FL	Orlando	Sanford Intl	1/5988	2/14/11	ILS or LOC RWY 9R, Orig
7–Apr–11	GA	Moultrie	Moultrie Muni	1/5990	2/14/11	RNAV (GPS) RWY 4, Orig
7–Apr–11	NC	Lexington	Davidson County	1/5993	2/14/11	GPS RWY 6, Orig
7–Apr–11	NC	Lexington	Davidson County	1/5994	2/14/11	GPS RWY 24, Orig
7–Apr–11	NC	Lexington	Davidson County	1/5995	2/14/11	VOR/DME RWY 24, Orig
7–Apr–11	AL	Huntsville	Madison County Executive/ Tom Sharp Jr Fld.	1/6026	2/14/11	RNAV (GPS) RWY 36, Orig
7–Apr–11	IA	Carroll	Arthur N Neu	1/6134	2/14/11	RNAV (GPS) RWY 13, Orig
7–Apr–11	IL	Decatur	Decatur	1/6136	2/14/11	LOC BC RWY 24, Amdt 10A

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
7–Apr–11	IL	Robinson	Crawford Co	1/6140	2/14/11	VOR or GPS RWY 27, Amdt 4
7–Apr–11	IL	Robinson	Crawford Co	1/6141	2/14/11	VOR or GPS RWY 17, Amdt 4
7–Apr–11	IL	Robinson	Crawford Co	1/6142	2/14/11	NDB RWY 17, Amdt 7
7–Apr–11	KS	Hutchinson	Hutchinson Muni	1/6305	2/14/11	RNAV (GPS) RWY 13, Orig
7–Apr–11	LA	Baton Rouge	Baton Rouge Metropolitan Ryan Field.	1/6394	2/14/11	NDB RWY 31, Amdt 2B
7–Apr–11	LA	Baton Rouge	Baton Rouge Metropolitan Ryan Field.	1/6395	2/14/11	RNAV (GPS) RWY 13, Amdt 1
7–Apr–11	LA	Baton Rouge	Baton Rouge Metropolitan Ryan Field.	1/6396	2/14/11	RADAR–1, Amdt 10C
7–Apr–11	LA	Baton Rouge	Baton Rouge Metropolitan Ryan Field.	1/6397	2/14/11	ILS or LOC RWY 13, Amdt 27C
7–Apr–11	LA	Baton Rouge	Baton Rouge Metropolitan Ryan Field.	1/6398	2/14/11	ILS or LOC RWY 22R, Amdt 10A
7–Apr–11	LA	Baton Rouge	Baton Rouge Metropolitan Ryan Field.	1/6399	2/14/11	RNAV (GPS) RWY 4L, Amdt 1A
7–Apr–11	LA	Baton Rouge	Baton Rouge Metropolitan Ryan Field.	1/6400	2/14/11	VOR RWY 4L, Amdt 17A
7–Apr–11	LA	Baton Rouge	Baton Rouge Metropolitan Ryan Field.	1/6401	2/14/11	RNAV (GPS) RWY 22R, Amdt 1A
7–Apr–11	LA	Baton Rouge	Baton Rouge Metropolitan Ryan Field.	1/6403	2/14/11	RNAV (GPS) RWY 31, Amdt 1B
7–Apr–11	LA	Baton Rouge	Baton Rouge Metropolitan Ryan Field.	1/6406	2/14/11	VOR/DME RWY 22R, Amdt 8F
7–Apr–11	FL	Apalachicola	Apalachicola Rgnl	1/6421	2/14/11	RNAV (GPS) RWY 13, Amdt 1
7–Apr–11	FL	Apalachicola	Apalachicola Rgnl	1/6422	2/14/11	RNAV (GPS) RWY 31, Amdt 1
7–Apr–11	FL	Apalachicola	Apalachicola Rgnl	1/6423	2/14/11	RNAV (GPS) B, Orig
7–Apr–11	FL	Apalachicola	Apalachicola Rgnl	1/6424	2/14/11	RNAV (GPS) RWY 6, Orig
7–Apr–11	FL	Apalachicola	Apalachicola Rgnl	1/6425	2/14/11	RNAV (GPS) RWY 24, Orig
7–Apr–11	LA	Monroe	Monroe Rgnl	1/6535	2/14/11	RADAR–1, Amdt 6A
7–Apr–11	IL	Morris	Morris Muni-James R Washburn Field.	1/6666	2/17/11	VOR A, Orig–A
7–Apr–11	TX	Haskell	Haskell Muni	1/6667	2/17/11	NDB or GPS RWY 18, Amdt 2
7–Apr–11	IL	Effingham	Effingham County Memorial	1/6668	2/17/11	LOC RWY 29, Amdt 1B
7–Apr–11	NE	Hebron	Hebron Muni	1/6669	2/17/11	GPS RWY 12, Orig–A
7–Apr–11	MI	Detroit	Detroit Metropolitan Wayne County.	1/6903	2/17/11	ILS or LOC RWY 3R, Amdt 15; ILS RWY 3R (CAT II), Amdt 15; ILS RWY 3R (CAT III), Amdt 15
7–Apr–11	MN	Grand Rapids	Grand Rapids/Itasca Co-Gordon Newstrom Fld.	1/6907	2/17/11	RNAV (GPS) RWY 34, Orig–A
7–Apr–11	NE	Fairmont	Fairmont State Airfield	1/6933	2/17/11	NDB RWY 17, Amdt 1A
7–Apr–11	TX	Snyder	Winston Field	1/7093	2/17/11	RNAV (GPS) RWY 35, Orig
7–Apr–11	TX	Snyder	Winston Field	1/7094	2/17/11	NDB RWY 35, Amdt 2
7–Apr–11	KS	Oberlin	Oberlin Muni	1/7095	2/17/11	NDB or GPS RWY 35, Orig–A

[FR Doc. 2011–6112 Filed 3–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30772; Amdt. No. 3416]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 25, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 25, 2011.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. 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.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125) *Telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on March 4, 2011.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 7 APR 2011

Jacksonville, FL, Jacksonville Intl, ILS or LOC RWY 7, ILS RWY 7 (CAT II), ILS RWY 7 (CAT III), Amdt 12D
Nampa, ID, Nampa Muni, RNAV (GPS) RWY 11, Amdt 1
Pittsburg, KS, Atkinson Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Wayne NE, Wayne Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Binghamton, NY, Greater Binghamton/Edwin A Link Field, RNAV (GPS) RWY 10, Orig
Binghamton, NY, Greater Binghamton/Edwin A Link Field, RNAV (GPS) RWY 28, Amdt 2
Binghamton, NY, Greater Binghamton/Edwin A Link Field, VOR RWY 10, Amdt 7
Reading, PA, Reading Rgnl/Carl A Spaatz Field, ILS OR LOC RWY 13, Amdt 1A
Reading, PA, Reading Rgnl/Carl A Spaatz Field, ILS OR LOC RWY 36, Amdt 30A
Reading, PA, Reading Rgnl/Carl A Spaatz Field, NDB RWY 36, Amdt 25, CANCELLED
Columbia, SC, Columbia Metropolitan, RADAR–1, Amdt 13
Burlington/Mount Vernon, WA, Skagit Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Delavan, WI, Lake Lawn, RNAV (GPS) RWY 18, Orig-A, CANCELLED
Delavan, WI, Lake Lawn, RNAV (GPS) RWY 36, Orig, CANCELLED
Delavan, WI, Lake Lawn, Takeoff Minimums and Obstacle DP, Amdt 1, CANCELLED

Effective 5 MAY 2011

Riverside, CA, Riverside Muni, RNAV (GPS) RWY 9, Amdt 1
Atlanta, GA, Paulding Northwest Atlanta, RNAV (GPS) RWY 13, Amdt 1
Atlanta, GA, Paulding Northwest Atlanta, Takeoff Minimums and Obstacle DP, Amdt 1
Kamuela, HI, Waimea-Kohala, RNAV (GPS) RWY 4, Amdt 1

Kamuela, HI, Waimea-Kohala, VOR/DME RWY 4, Amdt 1
Boone, IA, Boone Muni, Copter NDB OR GPS 225, Amdt 4A, CANCELLED
Boone, IA, Boone Muni, NDB RWY 15, Amdt 19B, CANCELLED
Boone, IA, Boone Muni, NDB RWY 33, Amdt 6B, CANCELLED
Carroll, IA, Arthur N Neu, NDB RWY 31, Amdt 7, CANCELLED
Council Bluffs, IA, Council Bluffs Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Decorah, IA Decorah Muni, NDB RWY 29, Amdt 1A, CANCELLED
Decorah, IA Decorah Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Guthrie Center, IA, Guthrie County Rgnl, NDB RWY 18, Orig-A, CANCELLED
Perry, IA, Perry Muni, NDB RWY 14, Amdt 2B, CANCELLED
Perry, IA, Perry Muni, NDB RWY 32, Amdt 5B, CANCELLED
Sibley, IA, Sibley Muni, Takeoff Minimums and Obstacle DP, Orig
Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 22R, Amdt 8A
Kingman, KS, Kingman Airport-Clyde Cessna Field, Takeoff Minimums and Obstacle DP, Orig
Homer, LA, Homer Muni, NDB RWY 12, Amdt 2, CANCELLED
Homer, LA, Homer Muni, RNAV (GPS) RWY 12, Amdt 1, CANCELLED
Homer, LA, Homer Muni, RNAV (GPS) RWY 30, Amdt 1, CANCELLED
Homer, LA, Homer Muni, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Lake Charles, LA, Lake Charles Rgnl, Takeoff Minimums and Obstacle DP, Orig
Lake Providence, LA, Byerley, RNAV (GPS) RWY 17, Orig, CANCELLED
Lake Providence, LA, Byerley, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Nantucket, MA, Nantucket Memorial, RNAV (GPS) RWY 33, Orig-A
Kalamazoo, MI, Kalamazoo/Battle Creek Intl, GPS RWY 5, Orig-A, CANCELLED
Kalamazoo, MI, Kalamazoo/Battle Creek Intl, GPS RWY 23, Orig-A, CANCELLED
Kalamazoo, MI, Kalamazoo/Battle Creek Intl, RNAV (GPS) RWY 5, Orig
Kalamazoo, MI, Kalamazoo/Battle Creek Intl, RNAV (GPS) RWY 23, Orig
Marlette, MI, Marlette, Takeoff Minimums and Obstacle DP, Orig
Niles, MI, Jerry Tyler Memorial, RNAV (GPS) RWY 15, Orig
Niles, MI, Jerry Tyler Memorial, RNAV (GPS) RWY 33, Orig
Niles, MI, Jerry Tyler Memorial, Takeoff Minimums and Obstacle DP, Amdt 6
Niles, MI, Jerry Tyler Memorial, VOR–A, Orig
Niles, MI, Jerry Tyler Memorial, VOR OR GPS RWY 3, Amdt 7A, CANCELLED
Niles, MI, Jerry Tyler Memorial, VOR OR GPS RWY 21, Amdt 3A, CANCELLED
Ada/Twin Valley, MN, Norman County Ada/Twin Valley, GPS RWY 33, Orig-A, CANCELLED
Ada/Twin Valley, MN, Norman County Ada/Twin Valley, RNAV (GPS) RWY 33, Orig
Fergus Falls, MN, Fergus Falls Muni-Einar Mickelson Fld, RNAV (GPS) RWY 13, Orig
Grand Marais, MN, Grand Marais/Cook County, RNAV (GPS) RWY 9, Orig
Grand Marais, MN, Grand Marais/Cook County, RNAV (GPS) RWY 27, Amdt 1
Little Falls, MN, Littles Falls/Morrison County-Lindberg Fld, Takeoff Minimums and Obstacle DP, Amdt 4
Wadena, MN, Wadena Muni, Takeoff Minimums and Obstacle DP, Orig
Ahoskie, NC, Tri-County, Takeoff Minimums and Obstacle DP, Orig
New Bern, NC, Coastal Carolina Rgnl, RADAR–1, Amdt 2B, CANCELLED
Fargo, ND, Hector Intl, ILS OR LOC RWY 36, Amdt 1
Kenmare, ND, Kenmare Muni, Takeoff Minimums and Obstacle DP, Orig
Concord, NH, Concord Muni, RNAV (GPS) RWY 12, Orig-B
Concord, NH, Concord Muni, RNAV (GPS) RWY 17, Orig-B
Concord, NH, Concord Muni, RNAV (GPS) RWY 35, Orig-B
Newark, NJ, Newark Liberty Intl, GLS RWY 22L, Orig-B
Newark, NJ, Newark Liberty Intl, ILS OR LOC RWY 11, Amdt 2A
Newark, NJ, Newark Liberty Intl, ILS OR LOC RWY 22L, ILS RWY 22L (SA CAT I), ILS RWY 22L (SA CAT II), Amdt 12A
Raton, NM, Raton Muni/Crews Field, GPS RWY 2, Amdt 1A, CANCELLED
Raton, NM, Raton Muni/Crews Field, GPS RWY 25, Amdt 1, CANCELLED
Raton, NM, Raton Muni/Crews Field, NDB RWY 2, Amdt 5, CANCELLED
Raton, NM, Raton Muni/Crews Field, RNAV (GPS) RWY 2, Orig
Raton, NM, Raton Muni/Crews Field, RNAV (GPS) RWY 25, Orig
Ruidoso, NM, Sierra Blanca Rgnl, CAPITAN ONE Graphic DP
Ruidoso, NM, Sierra Blanca Rgnl, GPS RWY 24, Orig-A, CANCELLED
Ruidoso, NM, Sierra Blanca Rgnl, RNAV (GPS) RWY 24, Orig
Ardmore, OK, Ardmore Downtown Executive, GPS RWY 17, Orig-A, CANCELLED
Ardmore, OK, Ardmore Downtown Executive, GPS RWY 35, Orig-A, CANCELLED
Ardmore, OK, Ardmore Downtown Executive, RNAV (GPS) RWY 17, Orig
Ardmore, OK, Ardmore Downtown Executive, RNAV (GPS) RWY 35, Orig
Kingsville, TX, Kleberg County, NDB RWY 13, Amdt 6
Muleshoe, TX, Muleshoe Muni, Takeoff Minimums and Obstacle DP, Orig
Uvalde, TX, Garner Field, Takeoff Minimums and Obstacle DP, Orig
Waco, TX, TSTC Waco, GPS RWY 17L, Orig-B, CANCELLED
Waco, TX, TSTC Waco, GPS RWY 35R, Orig-A, CANCELLED
Waco, TX, TSTC Waco, NDB RWY 35R, Amdt 11
Waco, TX, TSTC Waco, RNAV (GPS) RWY 17L, Orig
Waco, TX, TSTC Waco, RNAV (GPS) RWY 35R, Orig
Fort Atkinson, WI, Atkinson Muni, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. 2011–6117 Filed 3–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

Docket No. RM09–19–000; Order No. 746]

Western Electric Coordinating Council Qualified Transfer Path Unscheduled Flow Relief Regional Reliability Standard

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: Under section 215 of the Federal Power Act, the Commission approves regional Reliability Standard of the Western Electricity Coordinating Council (WECC) IRO–006–WECC–1 (Qualified Transfer Path Unscheduled Flow Relief) and six associated new definitions submitted to the Commission for approval by the North American Electric Reliability Corporation. This Reliability Standard is intended to mitigate transmission overloads due to unscheduled flow on a transfer path designated by WECC as being qualified for unscheduled flow mitigation.

DATES: *Effective Date:* This rule will become effective May 24, 2011.

FOR FURTHER INFORMATION CONTACT:
Terence Burke (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6498.
Danny Johnson (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8892.

SUPPLEMENTARY INFORMATION:
Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Final Rule

1. Under section 215 of the Federal Power Act (FPA),[1] the Commission approves regional Reliability Standard of the Western Electricity Coordinating Council (WECC) IRO–006–WECC–1 (Qualified Transfer Path Unscheduled Flow Relief) and six associated new definitions submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC), the Electric Reliability Organization (ERO) certified by the Commission. The approved

[1] 16 U.S.C. 824o.

Reliability Standard is intended to mitigate transmission overloads due to unscheduled flow on Qualified Transfer Paths.[2]

I. Background

A. NERC Reliability Standard IRO–006

2. On March 16, 2007, the Commission issued Order No. 693 approving 83 Reliability Standards proposed by NERC, including Interconnection Reliability Operations and Coordination (IRO) Reliability Standard IRO–006–3, titled "Reliability Coordination—Transmission Loading Relief." [3] In addition, under section 215(d)(5) of the FPA, the Commission directed the ERO to develop modifications to IRO–006–3 and other approved Reliability Standards to address specific issues identified by the Commission.

3. NERC Reliability Standard IRO–006–3 establishes a Transmission Loading Relief (TLR) process for use in the Eastern Interconnection to alleviate loadings on the system by curtailing or changing transactions based on their priorities and according to different levels of TLR procedures. Requirement R2.2 provides that "the equivalent Interconnection-wide transmission loading relief procedure for use in the Western Interconnection is the WECC Unscheduled Flow Mitigation Plan." This document provides detailed instructions for addressing unscheduled flows, i.e., parallel path flows, based on the topography and configuration of the Bulk-Power System in the Western Interconnection. The Unscheduled Flow Mitigation Plan identifies nine "steps" to address unscheduled flows. In the first three steps, the Mitigation Plan relies on phase angle regulators, series capacitors, and back-to-back DC lines to mitigate contingencies without curtailing transactions. Steps four through nine involve curtailment of transactions.

4. On March 19, 2009, the Commission approved IRO–006–4, which modified the prior version of the Reliability Standard and addressed the Commission's directives from Order No. 693.[4] The Commission subsequently accepted an erratum to that Reliability Standard that corrected the reference in Requirement R1.2 to the Unscheduled Flow Mitigation Plan (Mitigation Plan).[5]

B. WECC Delegation Agreement and WECC Regional Reliability Standard IRO–STD–006–0

5. On April 19, 2007, the Commission approved delegation agreements between NERC and each of the eight Regional Entities, including WECC.[6] In that approval, the Commission accepted WECC as a Regional Entity organized on an Interconnection-wide basis and accepted WECC's Standards Development Manual, which sets forth the process for development of WECC's Reliability Standards.[7]

6. On June 8, 2007, the Commission approved eight WECC regional Reliability Standards that apply in the Western Interconnection, including IRO–STD–006–0.[8] The regional Reliability Standard applies to transmission operators, load-serving entities and balancing authorities within the Western Interconnection. It addresses the mitigation of transmission overloads due to unscheduled line flow on specified paths. Specifically, Requirement R1 of IRO–STD–006–0 states that:

> WECC's Unscheduled Flow Mitigation Plan (Plan) * * * specifies that members shall comply with requests from (Qualified) Transfer Path Operators to take actions that will reduce unscheduled flow on the Qualified Path in accordance with the table entitled "WECC Unscheduled Flow Procedure Summary of Curtailment Actions," which is located in Attachment 1 of the Plan.[9]

The regional Reliability Standard then provides excerpts from the plan that describe actions entities must take to address unscheduled flow.

7. The June 8, 2007 Order directed WECC to develop certain modifications to the eight WECC Reliability Standards to address issues identified by the Commission. With respect to IRO–STD–006–0, the Commission directed WECC to clarify the term "receiver" used in the Reliability Standard. The Commission also directed WECC to address concerns raised by a commenter regarding WECC's inclusion of load-serving entities, which may be unable to meet the Reliability Standard's requirements, in the applicability section of the Reliability Standard.[10] The Commission directed WECC to remove a Sanctions Table that is inconsistent with the NERC Sanctions Guidelines. The Commission also directed WECC to address NERC's concerns regarding formatting, use of standard terms, and the need for greater specificity in the actions that a responsible entity must take.

C. Proposed Regional Reliability Standard

8. In a June 17, 2009 filing (NERC Petition), NERC requested Commission approval of proposed regional Reliability Standard IRO–006–WECC–1, which was developed in response to the Commission's directives in the June 8, 2007 Order, to replace the currently effective regional Standard. NERC stated that the purpose of IRO–006–WECC–1 is to mitigate transmission overloads due to unscheduled flow on Qualified Transfer Paths. Under the Reliability Standard, reliability coordinators are responsible for initiating schedule curtailments, and balancing authorities are responsible for implementing the curtailments. Specifically, proposed regional Reliability Standard IRO–006–WECC–1 contains the following two Requirements:

> R.1. Upon receiving a request of Step 4 or greater (*see* Attachment 1–IRO–006–WECC–1) from the Transmission Operator of a Qualified Transfer Path, the Reliability Coordinator shall approve (actively or passively) or deny that request within five minutes.
>
> R.2. The Balancing Authorities shall approve curtailment requests to the schedules as submitted, implement alternative actions, or a combination there of that collectively meets the Relief Requirement.

An attachment to IRO–006–WECC–1 summarizes the nine steps and related actions to address unscheduled flows.

D. Notice of Proposed Rulemaking

9. On October 29, 2010, the Commission issued its Notice of Proposed Rulemaking proposing to approve the regional IRO Reliability Standard IRO–006–WECC–1.[11] In

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[2] The term "Qualified Transfer Path" is defined as "[a] transfer path designated by the WECC Operating Committee as being qualified for WECC unscheduled flow mitigation." When the Standard becomes effective, this definition will be added to the *NERC Glossary of Terms Used in Reliability Standards.*

[3] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[4] *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards,* Order No. 713–A, 126 FERC ¶ 61,252 (2009), *reh'g denied,* Order No. 713–B, 130 FERC ¶ 61,032 (2010).

[5] *North American Electric Reliability Corp.,* Docket No. RD09–9–000 (Dec. 10, 2009) (unpublished letter order). Note that Reliability Standard IRO–006–4.1, Requirement R1.2 refers to the "WECC Unscheduled Flow Reduction Procedure," which is Attachment 1 to the Mitigation Plan, the term we use herein.

[6] *See North American Electric Reliability Corp.,* 119 FERC ¶ 61,060, *order on reh'g,* 120 FERC ¶ 61,260 (2007).

[7] *Id.* P 469–470.

[8] *North American Electric Reliability Corp.,* 119 FERC ¶ 61,260 (2007) (June 8, 2007 Order).

[9] Regional Reliability Standard IRO–STD–006–0, *available at http://www.wecc.biz/Standards/Approved%20Standards/IRO–STD–006–0.pdf.*

[10] June 8, 2007 Order, 119 FERC ¶ 61,260 at P 70–71.

[11] *Western Electric Coordinating Council Qualified Transfer Path Unscheduled Flow Relief Regional Reliability Standard,* Notice of Proposed Rulemaking, 75 FR 66702 (Oct. 29, 2010), FERC Stats & Regs. ¶ 32,663 (2010) (NOPR).

addition, the Commission raised concerns with respect to: (1) How entities will know whether to follow the national or regional Standard in a given situation; (2) WECC's and NERC's reliance on TOP–007–WECC–1 to ensure that entities manage power flows using steps one through three of the Mitigation Plan prior to requesting curtailments; (3) how the webSAS [12] tool will work with respect to the national and regional Standard; and (4) the potential reliability impact of reliability coordinators' inability to request curtailments.

10. In response to the NOPR, comments were filed by NERC, WECC, and Nevada Power Company and Sierra Pacific Power Company, both d/b/a NV Energy (NV Energy). In the discussion below, we address these comments.

II. Discussion

A. Approval of IRO–006–WECC–1

11. In the NOPR, the Commission proposed to approve regional Reliability Standard IRO–006–WECC–1 stating that it adequately addresses a number of the directives identified in the June 8, 2007 Order and represents an improvement to the current Standard. As stated in the NOPR, the Standard addresses our concern regarding the use of the term "receiver" by removing the term, thus removing potential confusion arising from the use of the undefined term. The Reliability Standard also provides additional clarity by removing load-serving entities from its applicability section since load-serving entities may not be able to meet the Standard's requirements regarding curtailment procedures. Further, the Standard includes reliability coordinators as an applicable entity and addresses their role in curtailment procedures. The Standard goes beyond the corresponding NERC Reliability Standard by requiring a reliability coordinator to approve or deny a transmission operator's curtailment request within five minutes. Finally, the WECC Reliability Standard addresses formatting concerns, conformance with NERC's Violation Severity Level and Violation Risk Factor matrix, and the elimination of a WECC sanction table. NERC, WECC, and NV Energy all support approval. Accordingly the Commission adopts the NOPR proposal and approves regional Reliability Standard IRO–006–WECC–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.

12. We raised in the NOPR several concerns regarding how the regional Reliability Standard would work in practice to ensure Reliable Operation in the Western Interconnect. As a result of the comments submitted, our concerns have been adequately addressed, and we do not direct any modifications to the regional Reliability Standard.

B. Issues Raised in NOPR

1. Consistency Between NERC and WECC

13. Requirement R1.2 in NERC Reliability Standard IRO–006–4 refers to the WECC Unscheduled Flow Reduction Procedure with regard to transmission loading relief in the Western Interconnection. In the NOPR, the Commission requested comment on the interaction between the differing requirements contained in the regional versus the national Reliability Standards, on which of the two Standards' requirements take precedence, and on how NERC intends to ensure compliance and consistent enforcement with regard to the Standards.

Comments

14. WECC and NV Energy comment that the Standards differ in their applicability. They state that NERC's IRO–006–4 addresses the obligations of the reliability coordinator and the balancing authority if an Interconnection-wide procedure is selected for the mitigation of overloads on transmission facilities. According to WECC and NV Energy, Regional Reliability Standard IRO–006–WECC–1 sets out reliability obligations for the reliability coordinator and balancing authority regarding transmission loading relief on the narrow subset of Western Interconnect transmission facilities designated as Qualified Transfer Paths. The two commenters assert there is no conflict between the NERC Reliability Standard and the regional Standard, as they work together.

15. NERC states that it recognized some potential for confusion in this matter and will soon file for approval a proposed Reliability Standard IRO–006–5 [13] that, among other things, eliminates reference to the WECC Unscheduled Flow Reduction Procedure as a procedure that may be selected by the reliability coordinator to achieve loading relief and, instead, mentions the procedure as an example for which coordination must occur.

Commission Determination

16. The Commission finds that NERC's plan to eliminate the opportunity for confusion with respect to this Reliability Standard adequately addresses the concerns raised in the NOPR.

2. TOP–007–WECC–1 and the Mitigation Plan

17. In the June 8, 2007 Order, the Commission determined that the regional Reliability Standard IRO–STD–006–0 is superior to the NERC Standard based in part on the specified pre-curtailment steps one through three of the Mitigation Plan.[14] As stated above, the Mitigation Plan is no longer referenced in IRO–006–WECC–1. The NERC Petition stated that proposed WECC regional Reliability Standard TOP–007–WECC–1, would work in conjunction with IRO–006–WECC–1 to ensure that pre-curtailment steps one through three of the Mitigation Plan are performed.[15] In the NOPR, the Commission requested comment as to whether WECC's reliance on proposed regional Standard TOP–007–WECC–1 or currently effective Reliability Standard TOP–STD–007–0 (whichever is in effect) is an adequate replacement for the currently required pre-curtailment actions set forth in steps one through three of the Mitigation Plan.

Comments

18. Each of the commenters note that Reliability Standard IRO–006–WECC–1 and the proposed regional Standard TOP–007–WECC–1 were intended to meet the performance objective of enhanced reliability but not to prescribe a specific method for achieving that objective. WECC and NV Energy assert that the pre-curtailment steps were not mandatory, but, as before, they remain tools available to transmission operators for the mitigation of transmission facility overloading. WECC states that reliability would suffer if transmission operators were limited in their action by a mandatory adherence to the Mitigation Plan.

[12] The webSAS (Security Analysis System) is a proprietary internet based application that is used by WECC to analyze, initiate, communicate, and provide compliance reports for implementation of the Unscheduled Flow Reduction Procedure. It is available by subscription through the vendor to provide notification of Unscheduled Flow Events, calculate and display required relief, and provide a rapid method of transaction curtailments.

[13] Subsequent to filing its comments in this Docket, NERC filed its Petition for Approval of Proposed New Interconnection Reliability Operations and Coordination Reliability Standards, Glossary Term and Implementation Plan on January 13, 2011 in Docket No. RD11–2–000.

[14] June 18, 2007 Order, 119 FERC ¶ 61,260 at P 69.

[15] NERC's petition for approval of regional Reliability Standard TOP–007–WECC–1 is currently pending before the Commission in Docket No. RM09–14–000.

Commission Determination

19. The Commission acknowledges the comments offered and is satisfied that IRO–006–WECC–1 does not present a reduction in reliability. The Commission also highlights the comment made by WECC that the Standard is applicable to reliability coordinators and balancing authorities, not to transmission operators. Under the Standard, the reliability coordinator must approve or deny the implementation of a step four or higher action, and the balancing authority must grant relief so the transmission operator does not violate a system operating limit (SOL) or an interconnection reliability operating limit (IROL) operating limit. But transmission operator's obligations remain unchanged by IRO–006–WECC–1. They continue to be required to take immediate steps to relieve an SOL or IROL operating limit violation.

3. Operation of webSAS

20. According to the NERC Petition, the webSAS tool calculates curtailment and, unless the reliability coordinator actively denies the request, approves the curtailment within five minutes. The Commission requested in the NOPR additional information regarding how the webSAS program works in relation to WECC's proposed IRO–006–WECC–1 as well as the currently effective IRO–006–4, and whether conflicts could arise between the webSAS programming and the Mitigation Plan.

Comments

21. NV Energy and WECC comments describe of the webSAS program, explaining that it utilizes impedance modeling of the transmission network in the Western Interconnection and is able to determine transmission distribution factors that correspond to discrete transactions. It is configured to prescribe curtailments in accordance with the curtailment table in the WECC Unscheduled Flow Reduction Procedure, and is only one of the methods a balancing authority might use in devising curtailments. WECC notes that webSAS merely suggests strategies; the responsible balancing authority must implement those strategies. WECC further comments that WebSAS operates similarly whether utilized under the regional or the national Reliability Standard.

Commission Determination

22. The Commission is satisfied with the commenters' explanation of the operation of webSAS, as well as its proposed use within the mitigation process set out in Reliability Standard IRO–006–WECC–1.

4. Reliability Coordinators' Role in Curtailment

23. In the NOPR the Commission stated that, because reliability coordinators are the only entities with the wide-area view, the Commission believes it is appropriate that they, as the entities with the highest level of authority to ensure reliability, have the ability to initiate relief procedures.[16] In the NOPR, the Commission requested comment regarding its concerns that the proposed regional Reliability Standard does not mention the reliability coordinators' ability to request curtailments, and that automatic approval of curtailments may occur through the webSAS tool without reliability coordinator review.

Comments

24. WECC and NV Energy comment that the reliability coordinator always has the ability to issue directives or take other actions to ensure Reliable Operations under the authority granted in Reliability Standard IRO–001–1.1. NV Energy states that the automatic approval of requested curtailments after five minutes is an appropriate balance between allowing for the reliability coordinators' participation and adequately ensuring that transmission loading relief is obtained for the next hour.

Commission Determination

25. The Commission agrees with the commenters that NERC Reliability Standard IRO–001–1.1 provides the reliability coordinator authority to take actions to ensure Reliable Operations, and no further clarification is required.

5. Alternative Revisions

26. Because of the concerns expressed in the NOPR, the Commission questioned whether it might be more efficient and appropriate if all the WECC rules and procedures with respect to unscheduled flow mitigation were incorporated in a single document.

[16] NOPR, FERC Stats. & Regs. ¶ 32,663 at P 30.

Comments

27. WECC asserts that regional Reliability Standard IRO–006–4 does not mandate following the Mitigation Plan but only suggests that the Mitigation Plan is a procedure available to a reliability coordinator. Therefore, incorporating the WECC rules and procedures into the Mitigation Plan would not eliminate the need for an enforceable regional Reliability Standard. WECC also comments that the differing purposes of the Mitigation Plan, IRO–006–WECC–1, and TOP–007–WECC–1 would thwart efforts to combine them. NERC notes that it has already undertaken eliminating the regional differences from the continent-wide standard in its proposed IRO–006–5.

Commission Determination

28. The clarification provided by WECC adequately addresses the Commission's concerns. Accordingly, the Commission finds that IRO–006–WECC–1 represents an improvement to reliability.

III. Information Collection Statement

29. The following collections of information contained in this Reliability Standard have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1955.[17] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[18]

30. The Commission solicited comments on the burden to implement IRO–006–WECC–1 which, rather than creating entirely new requirements, instead modifies the existing regional Reliability Standard governing qualified transfer path unscheduled flow relief and thus imposes a minimal additional burden on the affected entities. The Commission received no comments as to the issue of reporting burden estimates. The Commission has not directed any modifications to the Requirements of the Reliability Standard being approved. Thus this Final Ruled does not materially or adversely affect the burden estimates provided in the NOPR.

31. *Burden Estimate:* The burden for the requirements in this final rule follow:

[17] 44 U.S.C. 3507(d).

[18] 5 CFR 1320.11.

Data collection FERC–725E	Number of respondents	Number of responses	Hours per response	Total annual hours
35 Balancing Authorities and 1 Reliability Coordinator—Reporting Requirement	36	1	1	36
35 Balancing Authorities and 1 Reliability Coordinator—Recordkeeping Requirement	36	1	1	36
Total				72

Total Annual hours for Collection: 36 reporting +36 recordkeeping = 72 hours.

Reporting = 36 hours @ $120/hour = $4320.

Recordkeeping = 36 hours @ $40/hour = $1440.

Total Costs = Reporting ($4320) + Recordkeeping ($1440) = $5760.

Title: FERC 725E, Mandatory Reliability Standards for the Western Electric Coordinating Council.

Action: Proposed collection of information.

OMB Control No: 1902–0246.

Respondents: Balancing Authorities and Reliability Coordinator in the Western Electricity Coordinating Council.

Frequency of Responses: On Occasion.

Necessity of the Information: This Final Rule would approve a revised Reliability Standard modifying the existing requirement for entities to respond to requests for curtailment. The proposed Reliability Standard requires entities to maintain documentation evidencing their response to such requests.

Internal review: The Commission has reviewed the requirements pertaining to proposed regional Reliability Standard IRO–006–WECC–1 and believes it to be just, reasonable, not unduly discriminatory or preferential, and in the public interest. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

32. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, *Phone:* (202) 502–8663, *fax:* (202) 273–0873, *e-mail: DataClearance@ferc.gov*]. Comments on the requirements of this Final Rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at: *oira submission@omb.eop.gov.* Please reference OMB Control Number 1902–0246 and the docket number of this final rulemaking in your submission.

IV. Environmental Analysis

33. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[19] The action taken in the Final Rule fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural, for information gathering, analysis, and dissemination.[20] Accordingly, neither an environmental impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

34. The Regulatory Flexibility Act of 1980 (RFA)[21] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[22] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[23]

35. Most of the entities (*i.e.,* reliability coordinators and balancing authorities) to which the requirements of this Rule would apply do not fall within the definition of small entities. The Commission estimates that only 2–4 of the 35 balancing authorities are small and that the economic impact on each of these is $160 per year. The Commission does not consider this to be a significant economic impact. Based on the foregoing, the Commission certifies that this Rule will not have a significant impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Document Availability

36. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

37. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

38. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

39. These regulations are effective May 24, 2011. The Commission notes

[19] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[20] 18 CFR 380.4(a)(5).

[21] 5 U.S.C. 601–612.

[22] 13 CFR 121.101.

[23] 13 CFR 121.201, Sector 22, Utilities & n. 1.

that although the determinations made in this Final Rule are effective May 24, 2011, regional Reliability Standard IRO–006–WECC–1 approved in this Final Rule will not become effective until the first day of the first quarter after applicable regulatory approval. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7040 Filed 3–24–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0794; FRL–9279–2]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on November 5, 2010 and concern oxides of nitrogen (NO_X), carbon monoxide (CO), oxides of sulfur (SO_2) and particulate matter emissions from boilers, steam generators and process heaters greater than 5.0 MMbtu/hour. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on April 25, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0794 for this action. The index to the docket 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: Idalia Pérez, EPA Region IX, (415) 972–3284, *perez.idalia@epa.gov.*

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

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On November 5, 2010 (75 FR 68294), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4320	Advance Emission Reduction Options for Boilers, Steam Generators and Process Heaters greater than 5.0 MMbtu/hr.	10/16/08	03/17/09

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from Paul Cort, Earthjustice; letter dated December 6, 2010 and received December 6, 2010. The comments and our responses are summarized below.

Comment #1: Earthjustice supported EPA's proposed approval of Rule 4320 and EPA's assertion that the fee provisions in the rule fail to comply with EPA policy on economic incentive programs.

Response #1: No response needed.

Comment #2: Earthjustice asked EPA to clarify that no emission reduction credit is appropriate for Rule 4320 until SJVAPCD submits additional documentation, subject to public review and comment, including documentation demonstrating permanent, enforceable, surplus and quantifiable CO and NO_X reductions associated with fees paid in lieu of direct control of these and documentation demonstrating the PM reductions associated with SO_2 controls.

Response #2: The discussion of SIP credits in our TSD and proposal was included for information only and does not affect our action on Rule 4320. Our proposed approval of Rule 4320 relied largely on a finding that the rule improved the SIP, and not on if or how many emission reductions the rule provides. Comments on whether SJVAPCD ensures adequate emission reductions are more appropriate to action on plans. When EPA approves a plan, we are effectively approving the emission reduction assumptions for specific rules that it is based on. Proposed rulemaking on a plan is subject to notice and comment and would be the appropriate forum to raise issues on whether reductions from specific rules should be credited to the SIP.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. Statutory and Executive Order Reviews

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

imposed by State law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 24, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 15, 2011.

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)(363)(i)(A)(*7*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(363) * * *

(i) * * *

(A) * * *

(*7*) Rule 4320, "Advance Emission Reduction Options for Boilers, Steam Generators and Process Heaters greater than 5.0 MMbtu/hr," adopted on October 16, 2008.

* * * * *

[FR Doc. 2011–7090 Filed 3–24–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 170

[USCG–2007–0030]

RIN 1625–AB20

Passenger Weight and Inspected Vessel Stability Requirements; Correction

AGENCY: Coast Guard, DHS.

ACTION: Correcting Amendment.

SUMMARY: The Coast Guard is correcting a final rule that appeared in the **Federal Register** on December 14, 2010. That rule amended Coast Guard regulations governing the maximum weight and number of passengers that may safely be permitted on board a vessel and other stability regulations, including increasing the Assumed Average Weight per Person (AAWPP) to 185 lb. The rule also improved and updated intact stability and subdivision and damage stability regulations.

DATES: These changes are effective April 25, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this amendment, contact Mr. William Peters, U.S. Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–5212), telephone 202–372–1371. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard is correcting a final rule that appeared in the **Federal Register** on December 14, 2010 (75 FR 78064). That rule, among other things, added new definitions of "Assumed average weight per person", "Constructed", and "Lightweight" to 46 CFR 170.055. The definition of "Length" in that section was left unchanged except that it was redesignated to a different paragraph. Due to a clerical error, however, the amendatory instructions in the rule would result in two redundant definitions of "Lightweight" and the elimination of a definition of "Length" in § 170.055. This correction remedies that error by removing the second occurrence of a definition of "Lightweight" and restoring the definition of "Length" in that section. This correction also revises an incorrect internet address in 46 CFR 170.090(g).

List of Subjects in 46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, 46 CFR part 170 is corrected by making the following correcting amendments:

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 170.055, revise paragraphs (k) and (l) to read as follows:

§ 170.055 Definitions concerning a vessel.

* * * * *

(k) *Length* means the distance between fore and aft points on a vessel. The following specific terms are used and correspond to specific fore and aft points:

(1) *Length between perpendiculars (LBP)* means the horizontal distance measured between perpendiculars taken at the forward-most and after-most points on the waterline corresponding to the deepest operating draft. For a small passenger vessel that has underwater projections extending forward of the forward-most point or aft of the after-most point on the deepest waterline of the vessel, the Commanding Officer, U.S. Coast Guard Marine Safety Center, may include the length or a portion of the length of the underwater projections in the value used for the LBP for the purposes of this subchapter. The length or a portion of the length of projections that contribute more than 2 percent of the underwater volume of the vessel is normally added to the actual LBP.

(2) *Length overall (LOA)* means the horizontal distance between the forward-most and after-most points on the hull.

(3) *Length on the waterline (LWL)* means the horizontal distance between the forward-most and after-most points on a vessel's waterline.

(4) *Length on deck (LOD)* means the length between the forward-most and after-most points on a specified deck measured along the deck, excluding sheer.

(5) *Load line length (LLL)* has the same meaning that is provided for the term *length* in § 42.13–15(a) of this chapter.

(6) *Mean length* is the average of the length between perpendiculars (LBP) and the length on deck (LOD).

(l) *Lightweight* means the displacement of a vessel with fixed ballast and with machinery liquids at operating levels but without any cargo, stores, consumable liquids, water ballast, or persons and their effects.

* * * * *

§ 170.090 [Amended]

■ 3. In § 171.090(g), remove "*http://www.uscg.mil/hq/cg5/cg5212.asp*" and add, in its place, "*http://www.uscg.mil/hq/cg5/cg5212*".

Dated: March 21, 2011.

Kathryn A. Sinniger,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2011–7048 Filed 3–24–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 930792–3265]

RIN 0648–XA305

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Closure of the Penaeid Shrimp Fishery Off South Carolina

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the penaeid shrimp commercial sector to trawling, i.e., brown, pink, and white shrimp, in the exclusive economic zone (EEZ) off South Carolina in the South Atlantic. This closure is necessary to protect the spawning stock of white shrimp that has been severely depleted by unusually cold weather conditions.

DATES: The closure is effective March 22, 2011 until the effective date of a notification of opening which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–570–5305; *fax:* 727–570–5583; *e-mail: Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The penaeid shrimp fishery of the South Atlantic is managed under the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under 50 CFR 622.35(d)(1), NMFS may close the EEZ adjacent to South Atlantic states that have closed their waters to harvest of brown, pink, and white shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather. Consistent with those procedures and criteria, the state of South Carolina has determined, based on the information from standardized assessments, that unusually cold temperatures have resulted in at least an 80-percent reduction of the white shrimp populations in its state waters. South Carolina closed its waters on January 10, 2011, to the harvest of brown, pink, and white shrimp, and has requested that the Council and NMFS implement a concurrent closure of the EEZ off South Carolina. The Council convened a review panel on March 2, 2011, to evaluate the data supporting the states' request. Based on the review panel's recommendation, the Council approved South Carolina's request and subsequently requested that NMFS concurrently close the EEZ off South Carolina to the harvest of brown, pink, and white shrimp. NMFS has determined that the recommended closure conforms with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, and, therefore, implements the closure effective March 22, 2011. The closure will be effective until the ending date of the closure in South Carolina, but may be ended earlier based on a request from the state. In no case will the closure remain effective after June 6, 2011. NMFS will terminate the closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

During the closure, as specified in 50 CFR 622.35(d)(2), no person may: (1) Trawl for brown, pink, or white shrimp in the EEZ off South Carolina; (2) possess on board a fishing vessel brown, pink, or white shrimp in or from the EEZ off South Carolina unless the vessel is in transit through the area and all nets with a mesh size of less than 4 inches (10.2 cm) are stowed below deck; or (3) for a vessel trawling within 25 nautical miles of the baseline from which the territorial sea is measured, use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

Classification

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

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the severely depleted spawning stock of white shrimp off South Carolina. Prior notice and opportunity for public comment would require time and would potentially further harm the spawning stock that has been impacted due to cold weather.

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

This action is authorized by 50 CFR 622.35(d) and is exempt from review under Executive Order 12866.

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

Dated: March 22, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–7118 Filed 3–22–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Docket No. 101126522–0640–02]

RIN 0648–XA319

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2011 total allowable catch of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 22, 2011 through 1200 hrs, A.l.t., May 31, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2011 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 14,232 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2011 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,182 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 21, 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 22, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–7116 Filed 3–22–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 58
Friday, March 25, 2011

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

DEPARTMENT OF DEFENSE

[Docket ID DOD–2011–OS–0036]

2 CFR Chapter XI

5 CFR Chapter XXVI

32 CFR Chapters I, V, VI, VII, XII, and Subtitle A

33 CFR Chapter II

36 CFR Chapter III

40 CFR Chapter VII

48 CFR Chapters 1, 2, 52, and 54

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: Department of Defense, Office of the Secretary.

ACTION: Request for information.

SUMMARY: In response to President Obama's Executive Order 13563, "Improving Regulation and Regulatory Review," the Department of Defense invites public comments on how it can change, streamline, or repeal its regulations. DoD will continue to work with the public and the business community to determine how its regulations can increase efficiency, transparency, and provide accountability.

DATES: Comments are requested by April 8, 2011.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Robert Cushing, Jr., 703–696–5282.

SUPPLEMENTARY INFORMATION: DoD regulations may be viewed by going to the eCFR at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl* and searching titles 2, 5, 32, 33, 36, 40, and/or 48.

Dated: March 21, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–7051 Filed 3–24–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0101]

RIN 0579–AD39

Importation of French Beans and Runner Beans From the Republic of Kenya Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of French beans and runner beans from the Republic of Kenya into the United States. As a condition of entry, both commodities would have to be produced in accordance with a systems approach that would include requirements for packing, washing, and processing. Both commodities would also be required to be accompanied by a phytosanitary certificate attesting that all phytosanitary requirements have been met and that the consignment was inspected and found free of quarantine pests. This action would allow for the importation of French beans and runner beans from the Republic of Kenya into the United States while continuing to provide protection against the introduction of plant pests.

DATES: We will consider all comments that we receive on or before May 24, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0101* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0101, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0101.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Grove, Regulatory Coordinator, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737–1231; (301) 734–6280.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

The national plant protection organization (NPPO) of the Republic of Kenya has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow

French beans and runner beans from the Republic of Kenya to be imported into the United States. As part of our evaluation of Kenya's request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and the risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov).

The PRA, titled "Importation of French Bean, *Phaseolus vulgaris* L., and Runner Bean, *Phaseolus coccineus* L., from Kenya into the United States: A Qualitative, Pathway-initiated Risk Assessment" (February 2009), evaluates the risks associated with the importation of French beans and runner beans into the United States from Kenya. The PRA and supporting documents identified ten pests of quarantine significance present in Kenya that could be introduced into the United States through the importation of French beans or runner beans. Eight of these pests were determined to have a high risk potential. These are *Bactrocera cucurbitae, Chrysodeixis chalcites, Dacus ciliatus, Helicoverpa armigera, Liriomyza huidobrensis, Maconellicoccus hirsutus, Spodoptera littoralis,* and *Thaumatotibia leucotreta.* Two of the pests were determined to have a medium risk potential: *Lampides boeticus* and *Maruca vitrata.*

APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of French beans and runner beans from Kenya into the United States and its territories only if they are produced in accordance with a systems approach.

The systems approach would require that the commodity be packed in packing facilities that are approved and registered with Kenya's NPPO. Each shipping box would have to be marked with the identity of the packing facility so that shipments can be traced back to the facility in the event of the discovery of a pest.

The beans would have to be washed in potable water, which will assist in removing any insects feeding on individual beans.

We would require the beans to be inspected by the Kenyan NPPO and found to be free of quarantine pests before being exported to the United States. The pests *Chrysodeixis chalcites, Helicoverpa armigera, Lampides boeticus, Maruca vitrata,* and *Spodoptera littoralis* cause obvious feeding damage and frass on beans, allowing beans infested with these pests to be eliminated during packing. These pests are also relatively large and easily seen during inspection.

In addition to causing obvious damage, *Maconellicoccus hirsutus* is a pink hibiscus mealy bug whose grayish-pink bodies are covered with mealy white wax and with white wax filaments projecting from the body, making the pest easily visible on infested beans. The pest *Liriomyza huidobrensis* is a leafminer whose mines are easily seen on bean leaves and pods, and therefore beans with damage caused by this pest can be culled during packing. Inspection is an effective mitigation for all the above pests.

The pests *Bactrocera cucurbitae, Dacus ciliatus,* and *Thaumatotibia leucotreta* are internal feeders, and infestation by these pests cannot be easily detected by inspection of whole beans. Therefore, we are proposing to require each bean pod to be either cut into chevrons or pieces that do not exceed 2 centimeters in length, or shredded or split the length of the bean pod. Split or shredded bean pod pieces would not exceed 8 centimeters in length and 8.5 millimeters in diameter. Cutting the beans will expose any quarantine pests that may be present during inspection, while shredding the beans will both expose and destroy internal feeding pests. Cutting or splitting the beans also allows for the detection of any larvae that may be present during inspection.

Only commercial consignments of French beans and runner beans would be allowed to be imported from Kenya. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Consignments of French beans and runner beans would also need to be accompanied by a phytosanitary certificate issued by Kenya's NPPO attesting that all APHIS phytosanitary requirements have been met and that the consignment was inspected and found free of quarantine pests.

We would add these requirements to the regulations in a new § 319.56–51.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov).

Kenya produced an average of about 37,000 metric tons (MT) of French beans per year between 2004 and 2009, of which it exported an average of about 34,000 MT, primarily to the European Union (EU). The EU provides a well-established market and it is unlikely that there would be a large diversion of French bean exports by Kenya from this market to the United States.

To examine potential effects of the rule for U.S. small entities, we model three levels of French bean exports to the United States from Kenya, of increasing magnitude: the amount that Kenya expects to export to the United States (800 MT), and amounts equal to 5 percent and 10 percent of Kenya's average annual exports worldwide, 2004–2009 (1,750 MT and 3,500 MT). The largest assumed level is equivalent to 1.3 percent of average annual consumption by the United States during this same period.

Yearly French bean imports from Kenya of 3,500 MT are estimated to result in a price decline of $12.60 per MT, or less than 1 cent per pound in the wholesale price of green beans, and a fall in U.S. production of 1,838 MT. Consumption is estimated to increase by 1,663 MT. Producer welfare could decline by $2.92 million and consumer welfare could increase by $3.35 million, yielding an annual net welfare gain of about $430,000.

While most U.S. green bean producers are small entities, the annual decrease in producer welfare per small entity for the 3,500 MT import scenario is estimated to be only about $66, or about 0.7 percent of average annual sales by small entities. The dollar decrease in welfare for most small fresh bean producers would be even smaller, given

that the majority planted less than an acre in green beans in 2007, while the average area planted in green beans by small-entity producers was 2.4 acres. Also, effects are likely to be smaller than indicated, to the extent that fresh French bean imports from Kenya would displace fresh bean imports from other countries.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow French beans and runner beans to be imported into the United States from Kenya. If this proposed rule is adopted, State and local laws and regulations regarding French beans and runner beans imported under this rule would be preempted while the vegetable is in foreign commerce. Fresh vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2010–0101. Please send a copy of your comments to: (1) Docket No. APHIS–2010–0101, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of French beans and runner beans from the Republic of Kenya into the United States under a combination of mitigations to reduce the risk of introducing a variety of pests. As a condition of entry, both commodities would have to be produced in accordance with a systems approach that would include requirements for packing, washing, and processing. Both commodities would also be required to be accompanied by a phytosanitary certificate attesting that all phytosanitary requirements have been met and that the consignment was inspected and found free of quarantine pests.

Implementing this proposed rule would require respondents to complete a phytosanitary certificate (foreign), register with packinghouses, and label boxes.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.333 hours per response.

Respondents: Foreign officials, importers of French and runner beans.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 1.5.

Estimated annual number of responses: 3.

Estimated total annual burden on respondents: 1 hour. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Add § 319.56–51 to read as follows:

§ 319.56–51 French beans and runner beans from Kenya.

French beans (*Phaseolus vulgaris* L.) and runner beans (*Phaseolus coccineus* L.) may be imported into the United States from Kenya only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Bactrocera cucurbitae, Chrysodeixis chalcites, Dacus ciliatus, Helicoverpa armigera, Lampides boeticus, Liriomyza huidobrensis, Maconellicoccus hirsutus, Maruca vitrata, Spodoptera littoralis,* and *Thaumatotibia leucotreta.*

(a) *Packinghouse requirements.* The beans must be packed in packing facilities that are approved and registered with Kenya's national plant protection organization (NPPO). Each shipping box must be marked with the identity of the packing facility.

(b) *Post-harvest processing.* The beans must be washed in potable water. Each bean pod must be either cut into chevrons or pieces that do not exceed 2 centimeters in length, or shredded or split the length of the bean pod. Split or shredded bean pod pieces may not

exceed 8 centimeters in length and 8.5 millimeters in diameter.

(c) *Commercial consignments.* French beans and runner beans must be imported as commercial consignments only.

(d) *Phytosanitary certificate.* Each consignment of French beans or runner beans must be accompanied by a phytosanitary certificate issued by Kenya's NPPO attesting that the conditions of this section have been met and that the consignment has been inspected and found free of the pests listed in this section.

Done in Washington, DC, this 21st day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–7088 Filed 3–24–11; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, and 127

[Docket No. SBA–2011–0006]

Small Business Jobs Act Tour: Selected Provisions Having an Effect on Government Contracting

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Public Meetings.

SUMMARY: The U.S. Small Business Administration's (SBA) Office of Government Contracting and Business Development (GC/BD) is tasked with implementing several provisions of the Small Business Jobs Act of 2010 (SBJA). On Monday, March 7, 2011, SBA announced a series of public meetings on its implementation of these provisions. The dates, times and locations, as well as registration information, are set forth below. SBA is providing this supplementary information on the government contracting provisions of the SBJA to provide background and focus input.

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. In addition, comments to SBA docket number SBA–2011–0006 must be received on or before April 16, 2011.

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.* In addition, you may submit comments, identified by SBA docket number SBA–2011–0006 by any of the following methods:

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

Mail: Small Business Jobs Act Tour—Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street, SW., Suite 8000, Washington, DC 20416.

Hand Delivery/Courier: Richard L. Miller, Small Business Jobs Act Tour—Office of Government Contracting and Business Development, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Mr. Miller, address above. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Richard L. Miller, Small Business Job's Act Tour—Office of Government Contracting and Business Development, 409 Third Street, SW., Washington, DC 20416, at (202) 205–6895; *Fax:* (202) 481–4291; *e-mail: richard.miller@sba.gov.*

SUPPLEMENTARY INFORMATION

I. Background

On September 27, 2010, President Obama signed the SBJA, which makes many significant small business program improvements. The new law provides critical resources to help small businesses continue to drive economic recovery and create jobs. The new law extended the successful SBA enhanced loan provisions while offering billions more in lending support, tax cuts, and other opportunities for entrepreneurs and small business owners. The new law also contained numerous provisions to help enhance small businesses ability to compete in government contracting and subcontracting. For example, the law addresses small business set-asides on multiple award contracts, contract consolidation, and timely payments to small business subcontractors. The contracting provisions also dovetail with recommendations released by the Interagency Task Force on Small Business Contracting in September (*http://www.sba.gov/content/interagency-task-force-federal-contracting-opportunities-small-businesses*). The Task Force was established by the President in April 2010 to identify ways in which to increase small business participation in the federal marketplace so that agencies meet and exceed their small business contracting goals.

Accordingly, SBA will conduct a Small Business Jobs Act Tour that will cover 13 cities. The objective of the tour is to provide information on SBJA provisions and to receive input on key 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.

9 to 10 am	Opening Keynote & Overview of Small Business Jobs Act.
10 to 10:15 am	Break.
10:15 to 11:30 am	Room 1—CONTRACTING
	Discussion and intake session surrounding key Jobs Act provisions: multiple-award set-asides, bundling, consolidation of requirements, subcontracting, mentor-protégé programs, presumption of loss and misrepresentation issues, and annual certification issues.
	Room 2—LENDER ROUNDTABLE
	Discussion for current and prospective SBA lenders: new efforts to simplify/streamline, enhance customer service in areas such as lending policy, processing, and oversight.
	Room 3—EXPORTING
	Discussion of new exporting tools: increased loan sizes, the Export Express program, state-level STEP grants, and additional efforts under the National Export Initiative.
11:30 am to 12:45 pm	Room 1—CONTRACTING (session above continues)
	Room 2—LENDER ROUNDTABLE (session above continues)

	Room 3—COUNSELING
	Discussion of counseling and training resources: Jobs Act support for Small Business Development Centers, enhanced efforts to support export counseling.
12:45 to 1:45 pm	Break for Lunch.
1:45 to 3 pm	Room 1—CONTRACTING
	Discussion of Size Standards: basics of SBA's small business size standards, current comprehensive review of size standards including methodology, other policy issues.
	Room 2—CAPITAL
	Discussion of opportunities in accessing capital: how SBA loan programs can help small business owners.
	Room 3—EXPORTING (repeat)
	Discussion of new exporting tools: Increased loan sizes, the Export Express program, state-level STEP grants, and additional efforts under the National Export Initiative.
3 to 4:15 pm	Room 1—CONTRACTING
	Discussion of local/regional contracting environment and resources: "meet-and-greet" with representatives such as regional/local SBA officials, 8(a) experts, and resource partners.
	Room 2—CAPITAL
	Discussion of new SBA loan programs and initiatives: Advantage loans, 504 re-financing (Jobs Act), the Dealer Floor Plan pilot (Jobs Act), and more.
	Room 3—COUNSELING (repeat)
	Discussion of counseling and training resources: Jobs Act support for Small Business Development Centers, enhanced efforts to support export counseling.

A. 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.

B. 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.

C. 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.

D. 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. In addition, SBA seeks input and suggestions on the following specific SBJA government contracting provisions:

E. Multiple Award Contract Set-Asides (Pub. L. 111–240 §§ 1311 1331)

Section 1311 of the SBJA defines the term "multiple award contract." In addition, § 1331 of the SBJA requires the Administrator of SBA and the Administrator for Federal Procurement Policy, in consultation with the Administrator of the General Services Administration (GSA) to issue regulations under which "Federal agencies may, at their discretion—(1) Set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns * * * (2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services act of 1949 (41 U.S.C. 253j(b)), set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns * * * and (3) reserve one or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns." In reviewing these provisions, the SBA would like input and suggestions on the following questions:

1. How should guidance differentiate between a total set-aside, a partial set-aside, and a procurement otherwise "reserved" for small businesses When it is appropriate for each to be used? When would it be inappropriate for each to be used? What types of "reserves" might be effective in a full and open competition for a task and delivery order contract to facilitate access to small businesses (*e.g.,* designating a certain number of the multiple awards for award to small businesses or subcategories of small business, or permitting a small business to receive a multiple award contract to compete for only a specified subset of functions on the task or delivery orders issued against the contract)? Should small businesses compete solely against other small businesses for contracts that are "reserved" for small business?

2. Should set-asides be authorized under GSA's Multiple Award Schedule (MAS) contracts? Should they be required under certain circumstances? Why or why not? What additional steps might be considered to increase small business participation on the Schedules? (**Note:** GSA has created a new section of its GSA MAS Web site focused on small business contracting at *http://www.gsa.gov/portal/content/202261.* Readers are encouraged to review this site in considering their response to this question).

3. Will small business utilization under "multiple award contracts" including GSA MAS contracts be increased through mandatory or discretionary use of set-asides?

4. If small business set-asides are mandated either at the contract level or ordering level, how will it affect a procuring agency's use of "multiple award contracts" including MAS contracts?

5. If set-asides are applied to "multiple award contracts" including GSA MAS contracts at the order level, what are some of the potential benefits or drawbacks?

6. At what time should small business size be determined for a multiple-award contract—at the time of (1) submission of a proposal for the contract, (2) submission of a quotation for the order, or some combination? What affect would requiring size determinations at the order level have on the procurement process for multiple award contracts?

7. How should the small business requirements (*e.g.,* limitation on subcontracting; non-manufacturer rule) apply to orders set aside for small business?

F. Bundling Accountability, Consolidation of Contracts Requirements (Pub. L. 111–240 §§ 1312–1313)

Section 1313 of the SBJA provide that an agency may not conduct an acquisition involving contract requirements with a total value of more than $2,000,000, unless the senior procurement executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—(A) Conducts market research; (B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements; (C) makes a written determination that the consolidation of contract requirements is necessary and justified; (D) identifies any negative impact by the acquisition strategy on contracting with small business concerns; and (E) certifies to the head of the Federal agency that steps will be taken to include small business concerns in the acquisition strategy. In addition, § 1312 of the SBJA requires agencies to post their rationale for a bundled requirement. In reviewing these provisions, the SBA would like input and suggestions on the following questions:

1. If you are a small business, do you frequently form teams (*i.e.,* when small businesses joint venture or form a prime and subcontractor relationship) for bundled contracts? Do you ever enter into any other types of arrangements besides joint ventures or prime/subcontract relationships to compete for bundled contracts? If so, please describe these arrangements.

G. Subcontracting; Misrepresentations, Plan Improvements, and Timeliness of Payment (Pub. L. 111–240 §§ 1321, 1322, 1334)

The SBJA requires the Administrator to establish a policy on small business subcontracting compliance, including assignment of periodic oversight and review responsibilities between contracting offices, small business offices, and program offices (*see* § 1321). It further provides that for contracts requiring subcontracting plans, a large business contractor must notify the contracting officer in writing when the prime fails to use a small business concern in contract performance that the prime used in preparing the bid or offer (*see* § 1322). In addition, the SBJA provides that for contracts requiring subcontracting plans, a large business contractor must notify the contracting officer in writing when the prime has been paid, the subcontractor has performed, and the prime's payment to the subcontractor is 90 days past due, or the prime has paid the subcontractor a reduced amount. Finally, the SBJA further provides that a contracting officer may record the identity of a contractor with a history of unjustified, untimely payments in the Federal Awardee Performance and Integrity System (*see* § 1334). In reviewing these provisions, SBA would like input and suggestions on the following questions:

1. With respect to Section 1321, who is currently responsible for monitoring small business subcontracting plan compliance and performance? Is there a function or office that can better monitor performance and compliance?

2. In implementing sections 1322 and 1334, what factors should SBA take into account to ensure the provision facilitates opportunities for small businesses in a manner that is consistent with economy and efficiency in federal contracting? For example, should the contracting officer be responsible for determining whether a prime contractor used a particular subcontractor in creating a bid or proposal? Should the contracting officer be responsible for determining whether the subcontractor has satisfactorily completed performance? How should the prime contractor report to the contracting officer? How should the contracting officer use the reported information? Are subcontractors able to report to the contracting officer when a prime contractor fails to utilize a subcontractor or fails to pay a subcontractor, or do prime contractors restrict subcontractors' ability to contact the contacting officer?

3. With respect to section 1334, what, if any, consequences should a prime contractor's late or reduced payment to a small business subcontractor have on that contractor's future ability to receive federal contracts?

H. Mentor Protégé Programs for WOSB, HUBZONE, and SDVOSB (Pub. L. 111–240 §§ 1331–1343)

The SBA's 8(a) Business Development Program currently authorizes a Mentor-Protégé Program as a tool to aid small Participant firms gain needed business development assistance, including expertise within their specific industries to successfully compete in the marketplace. The SBJA authorizes SBA to implement a Mentor-Protégé Program for HUBZone small businesses, service disabled veteran owned (SDVO) small businesses, and women-owned small businesses (WOSB) similar in structure to the current SBA 8(a) Mentor-Protégé Program. SBA is seeking input and suggestions on the following questions:

1. If SBA implements a Government-wide Mentor-Protégé program for HUBZone small businesses, SDVO small businesses and WOSBs, how should these government-wide programs interact with Mentor-Protégé programs sponsored by individual agencies? Should agency-specific Mentor-Protégé programs of other agencies be maintained? What, if any, challenges might this pose?

2. Should the Mentor-Protégé programs be identical for each of the programs (HUBZone, SDVO, WOSB) or should current differences contained in the programs be continued (*e.g.,* HUBZone program regulations currently allow joint ventures for HUBZone contracts only between 2 or more certified HUBZone firms; if continued, a mentor that is not a HUBZone firm could not perform a HUBZone contract as a joint venture with its HUBZone protégé firm)?

3. Are there specific industry sectors where small business development through Mentor-Protégé programs should be focused?

4. What types of incentives should be considered to encourage the formation of Mentor-Protégé relationships? Are there examples of incentives used by other agencies in their Mentor-Protégé programs (other than those requiring additional outlays of funds) that would benefit SBA's program?

5. What metrics should be considered to gauge a successful Mentor Protégé relationship?

6. What controls should be considered to mitigate potential fraud, waste, and abuse in the Mentor-Protégé relationship?

7. Would small businesses be better served if created a Government-wide Mentor-Protégé program to provide oversight and offer best practices, or would small businesses prefer Mentor-Protégé programs for each individual socioeconomic group?

I. Presumption of Loss/ Misrepresentation and Annual Certification of Size (Pub. L. 111–240 §§ 1341–1343)

Section 1341 of the SBJA provides that there shall be a presumption of loss equal to the value of the contract, subcontract, grant, cooperative agreement or cooperative research and development agreement set aside or intended for award to a small business when a concern willfully sought and received the award by misrepresentation. Section 1341 also provides that the submission of a bid or proposal for a contract, subcontract, grant, cooperative agreement or cooperative research and development set aside for small business concerns shall be deemed an affirmative, willful and intentional certification of size or status. Section 1341 further provides that an offer or application for a contract, subcontract or grant shall contain a certification of size or status signed by an authorized official on the same page containing the certification. Finally, Section 1341 also provides that SBA shall promulgate regulations to protect concerns from liability for misrepresentations in the case of unintentional errors, technical malfunctions and other situations. Section 1342 of the SBJA provides that concerns shall update their size or status in federal procurement databases at least annually, and firms that fail to update its status shall no longer be identified as small or some other status in the database. SBA is seeking input and suggestions on the following questions:

1. How does the deemed certification provision interact or relate to the requirement to provide a signature in connection with a size or status representation or certification?

2. How can an individual or firm claim a misrepresentation was unintentional or a technical malfunction when the individual signed a certification that contained the precise size or status being claimed?

3. What effect will the requirement to update size or status in federal procurement databases annually have on multi-year contracts?

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.
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.

Ana Ma,

Chief of Staff.

[FR Doc. 2011–7135 Filed 3–24–11; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–64099; File No. S7–11–11]

RIN 3235–AL11

Rule 17Ad–17; Transfer Agents', Brokers', and Dealers' Obligation To Search for Lost Securityholders; Paying Agents' Obligation To Search for Missing Securityholders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Securities Exchange Act of 1934 ("Exchange Act") by adding a subsection entitled, "Due Diligence for the Delivery of Dividends, Interest, and Other Valuable Property Rights." The amendment directs the Securities and Exchange Commission ("Commission") to revise Exchange Act Rule 17Ad–17, "Transfer Agents' Obligation to Search for Lost Securityholders" to: extend to brokers and dealers the requirement of Rule 17Ad–17 to search for lost securityholders; add to Rule 17Ad–17 a requirement that "paying agents" notify "missing security holders" in writing that the paying agent has sent the missing security holder a check that has not yet been negotiated; add to Rule 17Ad–17 an exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than $25; and add to Rule 17Ad–17 a provision clarifying that the written notification requirements shall have no effect on State escheatment laws. The amendment also requires the Commission to "adopt such rules, regulations, and orders necessary to implement this subsection no later than 1 year after the date of enactment of this subsection." The Commission is publishing for comment proposed amendments to Rule 17Ad–17 to implement the statutory requirements.

DATES: Comments should be received on or before May 9, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov* and include File Number S7–11–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*) and follow the instructions for submitting comments.

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 S7–11–11. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Thomas C. Etter, Jr., Special Counsel, at (202) 551–5710, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 21, 2010, the President signed the Dodd-Frank Act into law.[1] The Dodd-Frank Act was enacted to, among other things, promote the financial stability of the United States by improving accountability and transparency in the financial system.[2] Title IX of the Dodd-Frank Act provides the Commission with new tools to protect investors and improve the regulation of securities.[3]

Section 929W of the Dodd-Frank Act added subsection (g) to Section 17A of the Exchange Act ("Section 17A(g)"), which requires the Commission to revise Rule 17Ad–17 under the Exchange Act ("Rule 17Ad–17")[4] to extend the rule's requirement that transfer agents search for "lost securityholders" to brokers and dealers.[5]

Section 17A(g) further directs the Commission to revise Rule 17Ad–17 to provide a requirement that the "paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated."[6] Under Section 17A(g), written notification must be sent to a missing security holder no later than seven months after the sending of the not yet negotiated check.[7]

Section 17A(g)(1)(D)(ii) defines "paying agent" to include "any issuer,

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

[2] *See id.* at Preamble.

[3] *See id.* § 901 ("This section may be cited as the 'Investor Protection and Securities Reform Act of 2010'."); Title IX ("Investor Protections and Improvements to the Regulation of Securities").

[4] 17 CFR 240.17Ad–17.

[5] Rule 17Ad–17(b)(2) defines a "lost securityholder" to mean "a securityholder: (i) To whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the resent item is returned as undeliverable; and (ii) for whom the transfer agent has not received information regarding the securityholder's new address."

[6] Section 17A(g)(1)(A), 15 U.S.C. 78q–1(g)(1)(A). We note that Congress, in drafting Exchange Act Section 17A(g), used a two-word formulation of the term "security holder." In Rule 17Ad–17, however, there is a one-word formulation of the term "securityholder." For the sake of consistency within Rule 17Ad–17, we are proposing to use the term "missing securityholder" in Rule 17Ad–17. Throughout this release, we have used the term "securityholder" when discussing Rule 17Ad–17, and we have used the term "security holder" when discussing Section 929W of the Dodd-Frank Act or Section 17A(g) of the Exchange Act.

[7] *Id.* Section 17A(g) provides that written notification may be sent along with a check or other mailing subsequently sent to the missing security holder.

transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security."[8] In addition, Section 17A(g)(1)(D)(i) provides that "a security holder shall be considered a 'missing security holder' if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check."[9]

Section 17A(g)(1)(B) and (C) also require that the revisions to the rule: (i) Provide an exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than $25 and (ii) add a provision to make clear that the notification requirements imposed on paying agents shall have no effect on state escheatment laws.[10]

Section 17A(g)(2) requires the Commission to adopt rules, regulations, or orders necessary to implement the provisions of Section 17A(g)(1) no later than one year after the date of enactment of the Dodd-Frank Act.[11] Section 17A(g)(2) further requires the Commission, in proposing such rules, to seek to minimize disruptions to the current systems used by or on behalf of paying agents to process payments to account holders and avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.[12]

II. Rule 17Ad–17

A. Background

The Commission adopted Rule 17Ad–17 in 1997 to address situations where recordkeeping transfer agents lose contact with securityholders by requiring transfer agents to conduct database searches for lost securityholders.[13] As the Commission noted at that time, such loss of contact can be harmful to securityholders because they no longer receive corporate communications or the interest and dividend payments to which they may be entitled.[14] Additionally, their securities and any related interest and dividend payments to which they may be entitled are often placed at risk of being deemed abandoned under operation of state escheatment laws.[15] This loss of contact has various causes, but it most frequently results from: (1) Failure of a securityholder to notify the transfer agent of his/her correct address, especially after relocating to a new address or (2) failure of the estate of a deceased securityholder to notify the transfer agent of the death of the securityholder and the name and address of the trustee for the estate.[16]

B. Discussion

The proposed amendments would implement the statutory directive to extend the application of Rule 17Ad–17 to brokers and dealers. Specifically, the Commission proposes to revise paragraph (a) of Rule 17Ad–17 to add the words "broker, or dealer" following the rule's existing references to transfer agents.[17]

The Exchange Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others,"[18] and a "dealer" as "any person engaged in the business of buying and selling securities for such person's own account though a broker or otherwise."[19] The proposed rule would apply to all brokers and dealers. As a practical matter, however, the Commission preliminarily believes that the only brokers and dealers that would have obligations under the amended rule would be those that carry securities for the accounts of "customers" within the meaning of Exchange Act Rule 15c3–3.[20] Such brokers and dealers generally are referred to as "clearing firms" (as opposed to "introducing firms") and tend to be the larger brokerage firms.

The Commission proposes to redesignate current paragraph (c) of Rule 17Ad–17 as paragraph (d) of the rule, as discussed below. Proposed new paragraph (c) would include a requirement that a "paying agent" must provide written notification no later than seven months after the sending of any not yet negotiated check to each "missing securityholder" to inform the missing securityholder that such missing securityholder has been sent a check that has not yet been negotiated. Proposed paragraph (c)(2) of Rule 17Ad–17 would define "paying agent," consistent with the definition in Section 17A(g),[21] to include "any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person" that accepts payments from an issuer of securities and distributes the payments to securityholders. Proposed paragraph (c)(3) of Rule 17Ad–17 would, again consistent with Section 17A(g),[22] provide that a person would be considered a "missing securityholder" if a check is sent to the securityholder and the check is not negotiated before the earlier of the paying agent's sending the next regularly scheduled check or the elapsing of six months after the sending of the not yet negotiated check. Proposed paragraph (c)(4) of Rule 17Ad–17 would, as required by Section 17A(g),[23] exclude a paying agent from the notification requirements if the value of the not yet negotiated check is less than $25. Proposed paragraph (c)(5) of Rule 17Ad–17 would, again as required by Section 17A(g),[24] provide that the requirements of paragraph (c)(1) of Rule 17Ad–17 would have no effect on state escheatment laws.

Currently, Rule 17Ad–17(c) requires that every recordkeeping transfer agent shall maintain records to demonstrate compliance with the requirements of the

[8] Section 17A(g)(1)(D)(ii), 15 U.S.C. 78q–1(g)(1)(D)(ii).

[9] Section 17A(g)(1)(D)(i), 15 U.S.C. 78q–1(g)(1)(D)(i).

[10] *See* Section 17A(g)(1)(B) and (C), 15 U.S.C. 78q–1(g)(1)(B) and (C).

[11] Section 17A(g)(2), 15 U.S.C. 78q–1(g)(2).

[12] *Id.*

[13] *See* Exchange Act Release No. 39176 (Oct. 1, 1997), 62 FR 52229 (Oct. 7, 1997) (adopting Rule 17Ad–17).

[14] *See id.*

[15] *See id.* Generally, after expiration of a certain period of time, which varies from state to state but is usually three to seven years, an issuer or its transfer agent must remit abandoned property (*e.g.,* securities and funds of lost securityholders) to a state's unclaimed property administrator pursuant to the state's escheatment laws.

[16] *See* Exchange Act Release No. 37595 (Aug. 22, 1996), 61 FR 44249 (Aug. 28, 1996) (proposing Rule 17Ad–17).

[17] The proposal also would amend paragraph (a)(1) of Rule 17Ad–17 by: (i) Inserting the words "and every broker or dealer that holds customer security accounts" following the words "accounts of lost securityholders;" (ii) inserting the words "and each broker or dealer that holds customer security accounts" following the words "recordkeeping transfer agent;" and (iii) inserting the words "and broker or dealer" following the words "The transfer agent." The proposal would amend paragraph (a)(2) by inserting the words ", or broker or dealer" following the words "transfer agent" and paragraph (a)(3) by inserting the words ", or broker or dealer" following the words "transfer agent" and the words "or customer security account records of the broker or dealer" following the words "master securityholder files." In addition, the proposal would amend paragraph (b)(2)(i) of Rule 17Ad–17 by inserting "or customer security account records of a broker or a dealer" following the words "master securityholder file" and by inserting the words ", or broker or dealer" following the words "securityholder, the transfer agent." The proposal would amend paragraph (b)(2)(ii) by inserting the words "or broker or dealer" following the words "transfer agent".

[18] Exchange Act Section 3(a)(4)(A), 15 U.S.C. 78c(a)(4)(A).

[19] Exchange Act Section 3(a)(5)(A), 15 U.S.C. 78c(a)(5)(A).

[20] 17 CFR 240.15c3–3.

[21] Section 17A(g)(1)(D)(ii), 15 U.S.C. 78q–1(g)(1)(D)(ii).

[22] Section 17A(g)(1)(D)(i), 15 U.S.C. 78q–1(g)(1)(D)(i).

[23] Section 17A(g)(1)(B), 15 U.S.C. 78q–1(g)(1)(B).

[24] Section 17A(g)(1)(C), 15 U.S.C. 78q–1(g)(1)(C).

rule.[25] The Commission is proposing to redesignate this provision as paragraph (d) of the rule and to amend the paragraph to also require recordkeeping transfer agents, brokers, dealers, and paying agents to maintain records to demonstrate their compliance with the rule. The rule would require that such records be maintained for a period of not less than three years with the first year in an easily accessible place.[26]

Section 17A(g) further directs the Commission to avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.[27] We do not believe that multiple notifications by different paying agents for a given check is a likely scenario under our proposed rule amendments because we do not believe an issuer would use two paying agents for the same distribution. We request comment on the likelihood of such an occurrence and, if such an occurrence is probable with any frequency, on ways to avoid it from happening.

We are also proposing to amend the title of Rule 17Ad–17 to clarify that it would apply to entities other than transfer agents. Specifically, we propose to re-title the rule "Transfer agents', brokers', and dealers' obligation to search for lost securityholders; paying agents' obligation to search for missing securityholders".

Finally, to provide brokers, dealers, and paying agents with sufficient time to develop systems to comply with the proposed amendments to Rule 17Ad–17, we propose to establish a compliance date for the amendments of one year following the date on which the Commission takes final action on this proposal. We preliminarily believe that one year would provide brokers, dealers, and paying agents with ample time to come into compliance without unduly delaying the benefits to securityholders that Congress intended in enacting Section 17A(g).

III. Request for Public Comment

The Commission requests comment on all aspects of the proposed amendments to Rule 17Ad–17. We request comments on how brokers and dealers anticipate complying with the proposed rule's requirement to search for lost securityholders. We also request comment on whether the new term "missing securityholder," and its related requirements and timeframes will be confused with the rule's existing term "lost securityholder" and its related requirements and timeframes. We particularly request comment regarding whether brokers, dealers, and transfer agents, which are also included in the definition of "paying agent," foresee issues that may result from the use of the two terms.[28] With respect to Section 17A(g)(2)'s requirement that in preparing these amendments to Rule 17Ad–17 the Commission shall seek to "minimize disruptions to current systems," we request comment on any potential disruptions that may result from the proposed revisions and how to minimize any such potential disruptions.[29] We are also requesting cost data for implementation of the proposed revisions by industry participants. We are soliciting comments on any burdens to commerce that might result from the proposed rule amendments. Commentators should provide empirical data to support their views.

Finally, we request comments on our proposal to establish a compliance date for the amendments of one year following final action by the Commission.

IV. Paperwork Reduction Act

The proposed amendments to Rule 17Ad–17 would require a new and mandatory "collection of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA"),[30] consisting of maintaining records in order to comply with and to demonstrate compliance with the rule by brokers and dealers who would be newly added to paragraph (a) of the rule[31] and by paying agents who would be newly added to paragraphs (c) and (d) of the rule.[32] Accordingly, the PRA would be applicable to the proposed rule and would require approval of the Office of Management and Budget. The relevant record collection requirements would be covered by amendments to paragraph (a) to Rule 17Ad–17, new paragraph (c) of Rule 17Ad–17, and amended and renumbered paragraph (d) of Rule 17Ad–17.[33]

The collection of information under the proposed paragraph (b) of Rule 17Ad–17 is necessary to enable transfer agents, brokers, and dealers and paying agents, as custodians of records that determine the ownership of securities and the entitlement to corporate distributions, to reduce the number of lost and missing securityholders.

The term "paying agents" would include the following approximate numbers of entities: 10,379 issuers that file reports with the Commission; 5,063 broker-dealers registered with the Commission; 536 transfer agents registered with the Commission and the banking agencies; 11,797 registered investment advisers registered with the Commission; 264 indenture trustees; and 896 custodians; for a total of approximately 28,931 entities plus an unknown number in the category of "any other person."

Based on discussions with participants in the securities industry, we are assuming for the purposes of proposed Rule 17Ad–17, that on an annual basis, there will be approximately 250,000 searches by brokers and dealers and 50,000 notifications by paying agents.

A. Paragraph (a)

Under paragraph (a) of the proposed rule amendments, recordkeeping transfer agents, brokers, and dealers would collect the names and addresses of their lost securityholders, and the recordkeeping transfer agents, brokers, and dealers would submit this information to information data bases pursuant to paragraph (b) of the rule. Such data base searches must be conducted without charge to the lost securityholders. Much of the new information required to be collected (such as the taxpayer identification numbers of lost securityholders) generally is already maintained by brokers and dealers and transfer agents so there should not be an additional cost. Therefore, the Commission anticipates that the increased hourly burden imposed by these aspects of the rule revisions would be about two minutes per account per search.[34] Based

[25] 17 CFR 240.17Ad–17(c).

[26] Currently, pursuant to Rule 17Ad–7(i), 17 CFR 240.17Ad–7(i), transfer agents must maintain records to show their compliance with Rule 17Ad–17. This same requirement for transfer agents, brokers, dealers, and paying agents would be stated explicitly in proposed amended Rule 17Ad–17. In order to maintain consistency with proposed amended Rule 17Ad–17, we are also proposing a technical change to Rule 17Ad–7(i) so that it would cross-reference proposed amended Rule 17Ad–17(d) rather than proposed amended Rule 17Ad–17(c).

[27] *See* Section 17A(g)(2), 15 U.S.C. 78q–1(g)(2).

[28] We note that the term "lost securityholder" was adopted as part of Rule 17Ad–17 in 1997, and Congress used the term "missing security holder" when it added new subsection (g) to Exchange Act Section 17A. For the sake of consistency within Rule 17Ad–17, we are proposing to use the term "missing securityholder" in Rule 17Ad–17.

[29] Section 17A(g)(2), 15 U.S.C. 78q–1(g)(2).

[30] 44 U.S.C. 3501 *et seq.*

[31] 17 CFR 240.17Ad–17(a).

[32] 17 CFR 240.17Ad–17(c) and (d).

[33] *Id.*

[34] Based on information provided by the industry, the Commission estimates that broker and dealers will annually search for approximately 250,000 lost securityholders. The Commission estimates that approximately $3.00 will be spent per account in order to conduct a search (comprised of approximately $2.00 for two searches and

Continued

upon discussions with market participants, adding a corrected address in the event one is found would require approximately three minutes. The burden per account would be no more than five minutes. Assuming 250,000 annual searches by brokers and dealers for lost security holders, the increased hourly burden would be 1,250,000 minutes, or 20,833 hours (1,250,000 divided by 60).

B. Paragraph (c)

Under proposed paragraph (c)(1) of the rule, a paying agent must provide not less than one written notification to each missing securityholder no later than seven months after such securityholder has been sent a check that has not yet been negotiated. The notification may be sent with a check or other mailing subsequently sent to the missing securityholder but must be provided no later than seven months after the sending of the not yet negotiated check. The rule further provides that a paying agent shall be excluded from the notification requirement where the value of the not yet negotiated check is less than $25 and that the requirements of paragraph (c)(1) shall have no effect on state escheatment laws.

The paying agents could include approximately 28,931 identifiable entities as noted previously in this section. However, despite the large number of entities eligible to be paying agents, that number would be limited to those firms that would be able to provide financial services relevant to the rule. The Commission estimates that there would likely be no more than 1,000 entities actually serving as paying agents and that these entities would consist primarily of broker-dealers and transfer agents (including bank transfer agents), the sort of financial institutions that are accustomed to processing checks and other commercial documents, dealing with securityholder issues, maintaining financial records, and serving as intermediaries between issuers and securityholders. We note that, technically, the startup costs to enter the paying agent business, for a business entity already in the financial industry, would appear to be exceedingly modest in that the basic elements of being a paying agent simply involve mailing notification letters, sometimes including checks, and maintaining related financial records. While the entry costs would appear modest, to operate this sort of low margin business profitably would require economies of scale and existing business relationships that presumably would limit the likely number of active paying agents.

If we assume 1,000 paying agents notifying 50,000 missing securityholders with each of the notifications requiring three minutes of labor, we estimate the burden imposed by Rule 17Ad–17(c) on "paying agents" for providing written notification to all "missing securityholders" who have been sent checks that after seven months have not yet been negotiated to be a total of 150,000 minutes or a burden of 2,500 hours (150,000 divided by 60).

C. Paragraph (d)

Proposed paragraph (d) of Rule 17Ad–17 would require that transfer agents, brokers, dealers, and paying agents that are subject to the rule to maintain records necessary to demonstrate their compliance with the rule. The rule also would require transfer agents, brokers, dealers, and paying agents to maintain written procedures that describe their methodology for compliance. The records required by the proposed rule must be maintained for a period of not less than three years, with the first year in an easily accessible place, consistent with Exchange Act Section 17A. Based on discussions with participants in the securities industry, we believe that the annual recordkeeping function for records, which would be processed electronically, would require approximately one hour for every 500 missing securityholder accounts and every 500 lost securityholder accounts. For 250,000 searches by brokers and dealers, the recordkeeping time would be approximately 500 hours. For notification of 50,000 missing securityholders, the recordkeeping time for the paying agents (including any issuer, transfer agent, broker, dealer, investment advisor, indenture trustee, custodian, and any other person) would be approximately 100 hours.

In summary, assuming 250,000 searches by brokers and dealers (20,833 hours + 500 hours = 21,333 hours) and 50,000 notifications by paying agents (2,500 hours + 100 hours = 2,600 hours), the total estimated burden would be 23,933 hours (21,333 hours + 2,600 hours).

V. Costs and Benefits of Proposed Amendments

The costs of this proposal are imposed entirely by Section 929W of the Dodd-Frank Act and Section 17A(g). These statutory costs include, among other things, the application of the requirements of Rule 17Ad–17(a) to brokers and dealers, and the requirements imposed on "paying agents" by proposed Rule 17Ad–17(c) and (d). The costs are not imposed on brokers and dealers or paying agents by the Commission. Accordingly, it is not for the Commission to determine whether these costs are justified by the anticipated benefits of the revised rule.

Nevertheless, we request comment on the potential costs for any necessary modifications to information gathering, management, and record-keeping systems or procedures, as well as any potential costs or benefits resulting from the proposal for brokers, dealers, issuers, transfer agents, investment advisers, indenture trustees, custodians, regulators, or others. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposal.

The proposed rule changes should provide specific benefits to issuers and U.S. investors, benefits which are not readily quantifiable in terms of dollar value. Nevertheless, the proposal would: (1) Invoke the services of transfer agents and brokers and dealers to reduce the number of lost securityholders; (2) invoke the services of all paying agents to reduce the number of missing securityholders; and (3) improve the accuracy of securityholder records. We are seeking comment on how we may better identify and quantify the benefits that may result from the adoption of the proposed amendments.

VI. Initial Regulatory Flexibility Act Analysis

A. Reasons for Proposed Action

This action was expressly directed by legislation (*i.e.,* Section 929W of the Dodd-Frank Act, which added paragraph (g) to Section 17A of the Exchange Act).

B. Objectives and Legal Basis

The objectives of this proposal, as discussed above in Sections I and II, are to help reduce the number of lost and missing securityholders and to further the Commission's mission of protecting investors. The legal basis for the proposal is set forth in Section 17A(g).

C. Small Entities Subject to the Rule

1. Brokers and Dealers

According to Exchange Act Rule 0–10(c),[35] a broker or dealer is a small entity if it: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the

approximately $1.00 in administration costs). Therefore, the total cost for all brokers and dealers would be $750,000 (250,000 multiplied by $3.00).

[35] 17 CFR 240.0–10(c).

prior fiscal year as of which its audited financial statements were prepared pursuant to Section 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section.[36] Of the 5,063 brokers and dealers registered with the Commission, approximately 879 are small brokers or dealers. We note that the proposed amendments to Rule 17Ad–17 would, as a practical matter, apply only to brokers and dealers that carry securities for customer accounts (*i.e.,* clearing firms), which tend to be the larger broker and dealer firms. There are 503 clearing firms registered with the Commission, none of which qualifies as a small business. Accordingly, we do not expect small brokers or dealers to be affected by the amendments to Rule 17Ad–17.[37]

2. Paying Agents

Section 17A(g)(D)(ii) defines the term "paying agent" as including "any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payment from the issuer of a security and distributes the payments to the holder of the security." With respect to data for these entities: (1) 10,379 issuers file reports with the Commission of which 1,207 qualify as small businesses; [38] (2) 536 transfer agents registered with the Commission or with the Federal banking agencies of which 135 qualify as small businesses; [39] (3) 5,063 brokers-dealers registered with the Commission of which 879 qualify as small businesses; [40] (4) 11,797 investment advisers registered with the Commission of which 718 qualify as small businesses; [41] (5) 264 indenture trustees of which four qualify as small businesses; [42] and (6) 896 custodians of which 11 qualify as small businesses.[43] The Commission has no supportable basis to estimate the number of small entities with respect to the remaining category (*i.e.,* any other person). As noted herein in Section IV, while approximately 28,931 entities have been identified as potential "paying agents," the Commission preliminarily believes that no more than 1,000 such entities would actually serve as paying agents.

We preliminarily believe that the bulk of paying agent services would be provided by brokerage firms that handle customer securities (which as discussed above, as clearing firms, would not be small entities) and transfer agents (including bank transfer agents), both of which are firms that typically serve as intermediaries between issuers and securityholders.

D. Reporting, Recordkeeping, and Other Compliance Requirements

Proposed new paragraph (d) of Rule 17Ad–17 would require recordkeeping transfer agents, or brokers, or dealers, and paying agents to demonstrate compliance with these provisions and to maintain written procedures that describe the methodology for complying with the provisions. Such records would be required to be maintained for not less than three years, the first year in an easily accessible place. Their maintenance would be subject to examination by the appropriate regulatory agency as defined by Section 3(a)(34)(B) of the Exchange Act.[44]

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission preliminarily believes there are no rules that duplicate, overlap, or conflict with the proposed rule.

F. Significant Alternatives

With respect to small entities, the Commission considered whether viable alternatives to the proposed rulemaking exist that could accomplish the stated objectives of Section 17A(g) of the Exchange Act and whether they would minimize any significant economic impact of proposed rules on small entities. Specifically, the Commission considered the following alternatives: (1) The establishment of different procedures that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules insofar as they affect small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. However, inasmuch as Section 929W of the Dodd-Frank Act, which added Section 17A(g) to the Exchange Act, expressly requires the proposed revisions, no alternative to the proposed rule amendment appears available at this time.

The Commission encourages the submission of written comments with respect to any aspect of the Initial Regulatory Flexibility Analysis ("IFRA").[45] Those comments should specify costs of compliance with the proposed rule, and suggest alternatives that would accomplish the objective of the proposed amendments to Rule 17Ad–17. A copy of the IRFA may be obtained by contacting Thomas C. Etter, Jr., Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010, telephone no. (202) 551–5713.

VII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

The proposed amendments to the rule should have a neutral effect on efficiency and capital formation and should have no material anticompetitive effects. While we believe the proposed amendments to the rule would apply to all transfer agents, brokers, dealers, and paying agents, they could in theory create a barrier to entry for potential new entrants if the compliance costs associated with searching for and contacting lost or missing securityholders are high enough. The Commission encourages the submission of written comments on Section VII.

VIII. SBREFA Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[46] a rule is major if it has resulted in or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment regarding the potential impact of the proposed rule amendments on the economy on an annual basis. We also request that commenters provide empirical data and other factual support for their views.

[36] Paragraph (i) of Rule 0–10, 17 CFR 240.0–10, discusses the meaning of "affiliated person" as referenced in Paragraph (c) of Rule 0–10.

[37] 17 CFR 240.17Ad–17.

[38] *See* Exchange Act Rule 0–10(a). 17 CFR 240.0–10(a).

[39] *See* Exchange Act Rule 0–10(h). 17 CFR 240.0–10(h).

[40] *See* Exchange Act Rule 0–10(c). 17 CFR 240.0–10(c).

[41] *See* Investment Advisers Act Rule 0–7(a). 17 CFR 275.0–7(a).

[42] *See* Trust Indenture Act Rule 0–7. 17 CFR 260.0–7.

[43] *See* 13 CFR 121.201.

[44] 15 U.S.C. 78c(a)(34)(B).

[45] 5 U.S.C. 603.

[46] 5 U.S.C. 801, *et seq.* The Regulatory Flexibility Act requires regulatory agencies to consider the impact of their proposed and final regulations on small entities.

IX. Statutory Basis and Text of Proposed Amendments

Statutory Basis

Pursuant to Section 17A(g) of the Exchange Act, 15 U.S.C. 78q–1(g), the Commission proposes to amend § 240.17Ad–7 and § 240.17Ad–17 under the Exchange Act in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, the Commission proposes to amend part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

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

1. The general authority citation for part 240 is revised and the following citation is added in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78mm, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 et seq.; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) unless otherwise noted.

* * * * *

Section 240.17Ad–17 is also issued under Pub. L. 111–203, § 929W, 124 Stat. 1869 (2010).

* * * * *

§ 240.17Ad–7 [Amended]

2. Section 240.17Ad–7(i) is amended by removing "240.17Ad–17(c)" and adding in its place "240.17Ad–17(d)".

3. Section 240.17Ad–17 is amended by:

a. Revising the heading.

b. Revising paragraph (a)(1).

c. In paragraph (a)(2) adding the phrase ", or broker or dealer" following the word "agent".

d. In paragraph (a)(3) introductory text adding the phrase ", or broker or dealer" following the word "agent".

e. In paragraph (a)(3)(ii) adding the phrase "or customer security account records of the broker or dealer" following the word "files".

f. In paragraph (b)(2)(i) adding the phrase "or customer security account records of a broker or dealer" following the word "file" and adding the phrase ", or broker or dealer" following the phrase "securityholder, the transfer agent".

g. In paragraph (b)(2)(ii) adding the phrase "or broker or dealer" following the word "agent".

h. Redesignating paragraph (c) as paragraph (d), and adding new paragraph (c).

i. Revising newly redesignated paragraph (d).

The revisions and addition read as follows:

§ 240.17Ad–17 Transfer agents', brokers', and dealers' obligation to search for lost securityholders; paying agents' obligation to search for missing securityholders.

(a)(1) Every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders and each broker or dealer that holds customer security accounts shall exercise reasonable care to ascertain the correct addresses of such securityholders. In exercising reasonable care to ascertain such lost securityholders' correct addresses, each recordkeeping transfer agent and each broker or dealer shall conduct two data base searches using at least one information data base service. The transfer agent and broker or dealer shall search by taxpayer identification number or by name if a search based on taxpayer identification number is not reasonably likely to locate the securityholder. Such data searches must be conducted without charge to a lost securityholder and with the following frequency:

(i) Between three and twelve months of such securityholder becoming a lost securityholder and

(ii) Between six and twelve months after the transfer agent's or broker's or dealer's first search for such lost securityholder.

* * * * *

(c)(1) The paying agent, as defined in paragraph (c)(2) of this section, shall provide not less than one written notification to each missing securityholder stating that such securityholder has been sent a check that has not yet been negotiated. Such notification may be sent with a check or other mailing subsequently sent to the missing securityholder, but must be provided no later than seven (7) months after the sending of the not yet negotiated check.

(2) The term *paying agent* shall include any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holder of the security.

(3) The securityholder shall be considered a *missing securityholder* if a check is sent to the securityholder and the check is not negotiated before the earlier of the paying agent's sending the next regularly scheduled check or the elapsing of six (6) months after the sending of the not yet negotiated check.

(4) A paying agent shall be excluded from any notification requirement where the value of the not yet negotiated check is less than $25.

(5) The requirements of paragraph (c)(1) of this section shall have no effect on state escheatment laws.

(d) Every recordkeeping transfer agent, broker, or dealer carrying securities for the accounts of customers, and every paying agent shall maintain records to demonstrate compliance with the requirements set forth in this section which shall include written procedures that describe the transfer agent's, or broker's or dealer's, or paying agent's methodology for complying with this section. Such records shall be maintained for a period of not less than three (3) years with the first year in an easily accessible place.

By the Commission.

Dated: March 18, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–6940 Filed 3–24–11; 8:45 am]

BILLING CODE 8011–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 205

RIN 0412 AA–69

Participation by Religious Organizations in USAID Programs

AGENCY: United States Agency for International Development (USAID).

ACTION: Proposed rule.

SUMMARY: USAID is proposing to amend part 205 to more accurately reflect current Establishment Clause jurisprudence with respect to the use of Federal funds for inherently religious activities.

DATES: Comments must be submitted by May 9, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to: The Center for Faith-Based and Community Initiatives, U.S. Agency for International Development, Room 6.07–023, 1300 Pennsylvania Avenue, NW., Washington, DC 20523. Communications should refer to the "proposed rule." You may submit your comments by fax to 202–216–0077 or by e-mail to *fbci@usaid.gov.* A copy of each communication submitted will be available for inspection and copying

between 8:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Ari Alexander, Director, Center for Faith-Based and Community Initiatives, USAID, Room 6.07–023, 1300 Pennsylvania Avenue, NW., Washington, DC 20523; *telephone:* (202) 712–4080 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 2004, USAID published its final rule (the "Final Rule") on participation by religious organizations in USAID programs (69 FR 61716, codified at 22 CFR parts 202, 205, 211, and 226). The Final Rule implemented Executive Branch policy that, within the framework of constitutional guidelines, religious organizations should be able to compete on an equal footing with other organizations for USAID funding. The Final Rule revised USAID regulations pertaining to grants, cooperative agreements and contracts awarded for the purpose of administering grant programs to ensure their compliance with this policy and to clarify that religious organizations are eligible to participate in programs on the same basis as any other organization, with respect to programs for which such other organizations are eligible.

Among other things, the Final Rule provided that USAID funds could be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures were used for conducting eligible activities under the specific USAID program. Where a structure is used for both eligible and inherently religious activities, the Final Rule clarified that USAID funds could not exceed the cost of those portions of the acquisition, construction, or rehabilitation that were attributable to eligible activities. The Final Rule went on to state that USAID funds could not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other room that a religious congregation that is a recipient or sub-recipient of USAID assistance uses as its principal place of worship.

II. This Proposed Rule

Based on further legal review, USAID has concluded that some provisions in the Final Rule go beyond the requirements of the Establishment Clause and other Federal law, are not supported by Establishment Clause jurisprudence, and constrict USAID's ability to pursue the national security and foreign policy interests of the United States overseas. As such, these provisions unnecessarily and unduly restrict and interfere with the ability of USAID to effectively implement the bilateral foreign assistance programs of the United States. Accordingly, USAID proposes to amend the Final Rule to provide that, in general, nothing in USAID's regulations should be construed to prohibit USAID funds from being used for activities that are permitted under Establishment Clause jurisprudence or otherwise by law and that, in particular, USAID funds may be used for the acquisition, construction, or rehabilitation of structures that are used, in whole or in part, for inherently religious activities, so long as the program for which USAID assistance is provided (i) Is authorized by law and has a secular purpose, (ii) is made generally available to a wide range of organizations and beneficiaries which are defined without reference to religion, (iii) has the effect of furthering a development objective, (iv) the criteria upon which structures are selected for acquisition, construction, or rehabilitation are religiously neutral, and (v) the selection criteria are amenable to neutral application. Examples of programs where USAID funds may be used for the acquisition, construction, or rehabilitation of structures that are used, in whole or in part, for inherently religious activities include, but are not limited to, rehabilitation or reconstruction programs in a defined geographic area following a natural or manmade disaster; rehabilitation or reconstruction programs for schools; cultural or historical preservation of structures that are architectural, artistic, cultural, or historical landmarks; and rehabilitation or reconstruction programs to promote tourism or other related economic activities.

III. Findings and Certifications or Impact Assessment

Regulatory Planning and Review

This is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USAID has considered the economic impact of the proposed rule and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

List of Subjects of 22 CFR Part 205

Foreign aid, Grant programs, Nonprofit organizations.

For the reasons stated in the preamble, USAID proposes to amend chapter II of title 22 of the Code of Federal Regulations as follows:

PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS

1. The authority citation for part 205 continues to read as follows:

Authority: 22 U.S.C. 2381(a).

2. Revise § 205.1(d), revise paragraph (d) and add paragraph (j) to read as follows:

§ 205.1 Grants and cooperative agreements.

* * * * *

(d) USAID funds may be used for the acquisition, construction, or rehabilitation of structures that are used, in whole or in part, for inherently religious activities so long as the program for which USAID assistance is provided is authorized by law and has a secular purpose, is made generally available to a wide range of organizations and beneficiaries which are defined without reference to religion, has the effect of furthering a development objective, the criteria upon which structures are selected for acquisition, construction, or rehabilitation are religiously neutral, and the selection criteria are amenable to neutral application. Examples of programs where USAID funds may be used for the acquisition, construction, or rehabilitation of structures that are used, in whole or in part, for inherently religious activities include, but are not limited to, rehabilitation or reconstruction programs in a defined geographic area following a natural or manmade disaster; rehabilitation or reconstruction programs for schools; rehabilitation or reconstruction of structures that are architectural, artistic, cultural, or historical landmarks for cultural or historical preservation; and rehabilitation or reconstruction programs to promote tourism or other related economic activities.

* * * * *

(j) Recognizing that USAID pursues the national security and foreign policy interests of the United States overseas, nothing in this Part shall be construed to prohibit USAID funds from being used for activities that are permitted by Establishment Clause jurisprudence or otherwise by law.

Dated: March 4, 2011.

Ari Alexander,

Director, Center for Faith-Based and Community Initiatives.

[FR Doc. 2011–6974 Filed 3–24–11; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–160–FOR; OSM 2010–0019]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on program amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In response to correspondence related to implementation of the approved Pennsylvania program, Pennsylvania has submitted regulatory changes for approval to render its program no less effective than the Federal regulations as they relate to effluent limitations for post-mining discharges that are amenable to passive treatment technology.

This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., local time April 25, 2011. If requested, we will hold a public hearing on April 19, 2011. We will accept requests to speak until 4 p.m., local time on April 11, 2011.

ADDRESSES: You may submit comments, identified by "PA–160–FOR; Docket ID: OSM–2010–0019" by either of the following two methods:

Federal eRulemaking Portal: http://www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2010–0019. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.

Mail/Hand Delivery/Courier: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, PA 17101.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to obtaining copies of documents at *http://www.regulations.gov,* information may also be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Pittsburgh Field Division Office.

George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, Pennsylvania 17101, *Telephone:* (717) 782–4036, *E-mail: grieger@osmre.gov.*

Thomas Callaghan, P.G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, *Telephone:* (717) 787–5015, *E-mail: tcallaghan@state.pa.us.*

FOR FURTHER INFORMATION CONTACT: George Rieger, *Telephone:* (717) 782–4036. *E-mail: grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Request
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Request

By letter dated October 1, 2010, (Administrative Record Number PA 854.03), Pennsylvania sent us a request to approve statutory language and revised regulations related to post-mining pollutional discharges, the use of passive treatment technologies on regulated coal mining sites, and the elimination of manganese effluent limits on certain pollutional discharges under the influence of identified precipitation events. Pennsylvania is requesting approval of the statutory language found at Section 4.2(j) of PA Surface Mining Conservation Reclamation Act (PA SMCRA) and the revised regulations found at: 25 Pa Code Chapters 86.1; 87.102(a) and (e); 88.92(a) and (e); 88.187(a) and (e); 88.292(a) and (e); 89.52(c); and 90.102(a) and (e).

This proposed amendment was initiated by Pennsylvania as a result of a coal mine permit inspection, conducted by OSM, in which a post mining pollutional discharge was observed being treated under the provisions of 87.102(e). Section 87.102(e), Postmining pollutional discharges and corresponding provisions in Chapters 88, 89, and 90, were published in the Pennsylvania Bulletin on November 15, 1997, and have been implemented. To date, these regulations have not been submitted as a program amendment to Pennsylvania's approved regulatory program. Federal regulations at 30 CFR 732.17(g) provide that no change to laws or regulations shall take effect for the purposes of a State program until approved as an amendment. In a letter dated July 7, 2010, OSM notified Pennsylvania that until the regulations are approved by OSM, use of the provisions to approve the construction of new passive treatment facilities at regulated coal mine permits must be discontinued.

Statutory Changes: Section 4.2(j) of PA SMCRA is available online at Regulations.gov and in the Administrative Record at the addresses listed above under **ADDRESSES**.

Regulatory Changes: Pennsylvania submits the following summary of the proposed regulatory provisions changes at 25 Pa Code: The revision to 86.1 includes the definitions of "Passive Treatment System" and "Post-mining Pollutional Discharge." The revisions to Sections 87.102(a), 88.92(a), 88.187(a),

88.292(a), 89.52(c), and 90.102(a) result in the elimination of the manganese limits for Group B discharges which include surface runoff and discharges during precipitation events less than or equal to the 10 year/24 hour storm event. The addition of 87.102(e); 88.92(e); 88.187(e); 88.292(e); and 90.102(e) establish three specific categories of discharges that can be adequately treated using passive treatment technologies. They are: where pH is always greater than 6.0 and alkalinity always exceeds acidity; where acidity is always less than 100mg/l, iron is always less than 10mg/l, manganese is always less than 18mg/l, and flow is always less than 3 gpm; and where net acidity is always less than 300mg/l. The regulations do not limit applicability to only these three categories. The proposed regulations also establish construction and performance criteria for the treatment systems.

Supporting Documentation: Pennsylvania also provided references to OSM's regulations, excerpts from 40 CFR part 434, references to past correspondence with EPA on this issue, and a 1994 Pennsylvania report entitled "Best Professional Judgment Analysis for the Treatment of Post-Mining Discharges from Surface Mining Activities."

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Pennsylvania program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time April 11, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 31, 2011.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2011–7107 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1117]

RIN 1625–AA09

Drawbridge Operation Regulation; Raritan River, Arthur Kill and Their Tributaries, Staten Island, NY and Elizabeth, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operation regulations governing the operation of the Arthur Kill (AK) Railroad Bridge at mile 11.6, across Arthur Kill between Staten Island, New York and Elizabeth, New Jersey. This proposed rule would provide relief to the bridge owner from crewing their bridge by allowing the bridge to be operated from a remote location while continuing to meet the present and future needs of navigation.

DATES: Comments and related material must be received by the Coast Guard on or before May 24, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–

2010–1117 using any one of the following methods:

(1) *Federal Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Gary Kassof, Bridge Program Manager, First Coast Guard District; telephone (212) 668–7165, e-mail *gary.kassof@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–1117), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG–2010–1117" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–1117" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The Arthur Kill (AK) Railroad Bridge at mile 11.6, across Arthur Kill, has a vertical clearance of 31 feet at mean high water, and 35 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.72.

Beginning in 2009, Consolidated Rail Corporation (Conrail) conducted a year of successful remote operation tests of the AK Railroad Bridge without any objections from marine users. A draw operator was on scene at all times to ensure compliance with drawbridge operating regulations cited above. In September 2010, Conrail formally requested that the drawbridge operating regulation be revised to permit remote operation of the Arthur Kill AK Railroad Bridge.

Conrail, on October 20, 2010 and at the request of the Coast Guard, presented its proposal to remotely operate the bridge to the New York Harbor Operation Committee. Discussions between Conrail, the Coast Guard, and the New York Harbor Operations Committee ensued with no objections to the remote operation raised by the committee members.

Discussion of Proposed Rule

The Arthur Kill Railroad Bridge would operate the same way as stated in the existing regulation, except that it will be operated remotely from the Lehigh Valley drawbridge at mile 4.3 across Newark Bay or at the bridge locally.

The revised regulation would require a sufficient number of closed circuit TV cameras, approved by the Coast Guard, to be maintained at the bridge to enable the remotely located bridge tender to have a full view of the waterway and all vessel traffic.

In addition, VHF–FM radiotelephone channels 13 and 16 would be monitored to facilitate vessel to bridge communication from both the remote and the local control location.

Directional microphones and signal horns would also be installed at the bridge to receive and deliver signals to vessels.

In the event that the remote operation equipment fails to operate in any way, a bridge tender will be dispatched to the bridge to arrive no more than 45 minutes following the equipment failure.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This conclusion is based upon the fact that the bridge will continue to operate according to the existing regulations except that it could be controlled from either a remote location or locally.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This action will not have a significant economic impact on a substantial number of small entities for the following reasons. The bridge will continue to operate according to existing regulations except that it will be controlled from either a remote location or locally.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Joe Arca, First Coast Guard District, Bridge Program Manager, at *joe.m.arca@uscg.mil* or 212–668–7165. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination

that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Revise § 117.702 to read as follows:

§ 117.702 Arthur Kill

(a) The draw of the Arthur Kill (AK) Railroad Bridge shall be maintained in the full open position for navigation at all times, except during periods when it is closed for the passage of rail traffic.

(b) The bridge owner/operator shall maintain a dedicated telephone hot line for vessel operators to call the bridge in advance to coordinate anticipated bridge closures. The telephone hot line number shall be posted on signs at the bridge clearly visible from both the up and downstream sides of the bridge.

(c) Tide constrained deep draft vessels shall notify the bridge operator, daily, of their expected times of vessel transits through the bridge, by calling the designated telephone hot line.

(d) The bridge shall not be closed for the passage of rail traffic during any predicted high tide period if a tide constrained deep draft vessel has provided the bridge operator with an advance notice of their intent to transit through the bridge. For the purposes of this regulation, the predicted high tide period shall be considered to be from two hours before each predicted high tide to a half-hour after each predicted high tide taken at the Battery, New York.

(e) The bridge operator shall issue a manual broadcast notice to mariners of the intent to close the bridge for a period of up to thirty minutes for the passage of rail traffic, on VHF–FM channels 13 and 16 (minimum range of 15 miles) 90 minutes before and again at 75 minutes before each bridge closure.

(f) Beginning at 60 minutes prior to each bridge closure, automated or manual broadcast notice to mariners must be repeated at 15 minute intervals and again at 10 and 5 minutes prior to each bridge closure and once again as the bridge begins to close, at which point the appropriate sound signal will be given.

(g) Two 15 minute bridge closures may be provided each day for the passage of multiple rail traffic movements across the bridge. Each 15 minute bridge closure shall be separated by at least a 30 minute period when the bridge is returned to and remains in the full open position. Notification of the two 15 minute closures shall follow the same procedures outlined in paragraphs (e) and (f) above.

(h) A vessel operator may request up to a 30 minute delay for any bridge closure in order to allow vessel traffic to meet tide or current requirements; however, the request to delay the bridge closure must be made within 30 minutes following the initial broadcast for the bridge closure. Requests received after the initial 30 minute broadcast will not be granted.

(i) In the event of a bridge operational failure, the bridge operator shall immediately notify the Coast Guard Captain of the Port New York. The bridge owner/operator must provide and dispatch a bridge repair crew to be on scene at the bridge no later than 45 minutes after the bridge fails to operate. A repair crew must remain on scene during the operational failure until the bridge has been fully restored to normal operations or until the bridge is raised and locked in the fully open position.

(j) When the bridge is not tended locally it must be operated from a remote location. A sufficient number of closed circuit TV cameras, approved by the Coast Guard, shall be operated and maintained at the bridge site to enable the remotely located bridge tender to have full view of both river traffic and the bridge.

(k) VHF–FM channels 13 and 16 shall be maintained and monitored to facilitate communication in both the remote and local control locations. The bridge shall also be equipped with directional microphones and horns to receive and deliver signals to vessels.

(l) Whenever the remote control system equipment is disabled or fails to operate for any reason, the bridge operator shall immediately notify the Captain of the Port New York. The bridge shall be physically tended and operated by local control as soon as possible, but no more than 45 minutes after malfunction or disability of the remote system. Mechanical bypass and override capability of the remote operation system shall be provided and maintained at all times.

Dated: March 10, 2011.

Daniel A. Neptun,

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

[FR Doc. 2011–7049 Filed 3–24–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–1036–201062; FRL–9286–5]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Atlanta; Determination of Attainment for the 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Atlanta, Georgia nonattainment area has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS) based on quality assured, quality controlled monitoring data from 2008–2010. The Atlanta, Georgia 1997 8-hour ozone nonattainment area (hereafter referred to as the "Atlanta Area") is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in Georgia. If this proposed determination is made final, the requirement for the State of Georgia to submit an attainment demonstration and associated reasonably available control measures (RACM) analysis, a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS for the Atlanta, Georgia 8-hour ozone nonattainment area, shall be suspended for as long as the Atlanta Area continues to meet the 1997 8-hour ozone NAAQS.

DATES: Written comments must be received on or before April 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–1036 by one of the following methods:

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

2. *E-mail: benjamin.lynorae@epa.gov*.
3. *Fax:* (404) 562–9019.
4. *Mail:* "EPA–R04–OAR–2010–1036," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–1036. 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 through *http://www.regulations.gov* or by e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Spann may be reached by phone at (404) 562–9029 or via electronic e-mail at *spann.jane@epa.gov*. Mr. Farngalo may be reached by phone at (404) 562–9152 or via electronic mail at *farngalo.zuri@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?
II. What is the effect of this action?
III. What is the background for this action?
IV. What is EPA's analysis of the relevant air quality data?
V. Proposed Action
VI. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is proposing to determine that the Atlanta Area has attained the 1997 8-hour ozone NAAQS. Today's proposal is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2008–2010 showing that the Atlanta Area has monitored attainment of the 1997 8-hour ozone NAAQS. EPA is in the process of establishing a new 8-hour ozone NAAQS, and expects to finalize the reconsidered NAAQS by July 2011. Today's action, however, relates only to the 1997 8-hour ozone NAAQS. Requirements for the Atlanta Area under the 2011 NAAQS will be addressed in the future.

II. What is the effect of this action?

If this determination is made final, under the provisions of EPA's ozone implementation rule (*see* 40 CFR 51.918), it would suspend the requirement to submit an attainment demonstration and associated RACM analysis, RFP plan, contingency measures,[1] and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS. The attainment determination would continue until such time, if any, that EPA subsequently determines that the Atlanta Area has violated the 1997 8-hour ozone NAAQS. This determination is separate from any future designation determination or requirements for the Atlanta Area based on the revised or reconsidered ozone NAAQS, and would remain in effect regardless of whether EPA designates the Atlanta Area as a nonattainment area for purposes of a future revised or reconsidered 8-hour ozone NAAQS.[2] Furthermore, as described below, a final clean data determination is not equivalent to the redesignation of the Atlanta Area to attainment for the 1997 8-hour ozone NAAQS. If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the Atlanta Area has violated the 1997 8-hour ozone NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.918, would no longer exist, and the Atlanta Area would thereafter have to address pertinent requirements.

As mentioned above, the determination that EPA proposes with this **Federal Register** notice is not equivalent to a redesignation of the Atlanta Area to attainment. Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the 1997 8-hour ozone NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action does not involve approving a maintenance plan for this Area as required under section 175A of the CAA, or affirm that the Area has met all other requirements for redesignation. The designation status of the Atlanta Area would remain nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment. The State of

[1] Contingency measures associated with a maintenance plan (such as if the State opts to redesignate this Area to attainment for the 1997 8-hour ozone NAAQS) would still be required.

[2] As noted above, at this time the proposed determination of attainment, if finalized, would suspend only those requirements related to attainment that are currently applicable to the Atlanta Area.

Georgia is currently working on a redesignation request and maintenance plan to change the Atlanta Area's status from nonattainment to attainment for the 1997 8-hour ozone NAAQS. EPA will consider Georgia's redesignation request and maintenance plan for the Atlanta Area in a rulemaking separate from today's proposed action.

This proposed action, if finalized, is limited to a determination that the Atlanta Area has attained the 1997 8-hour ozone NAAQS. The 1997 8-hour ozone NAAQS became effective on July 18, 1997 (62 FR 38894), and are set forth at 40 CFR 50.10. On March 12, 2008, EPA promulgated revised 8-hour ozone NAAQS. Subsequently, on January 19, 2010, EPA published a proposed rule to reconsider the 2008 8-hour ozone NAAQS (75 FR 2938) and to propose a revised ozone NAAQS. EPA has not yet made any designation determinations for the Atlanta Area based on the revised 2008 8-hour ozone NAAQS. Today's proposed determination for the Atlanta Area, and any final determination, will have no effect on, and is not related to, any future designation determination that EPA may make based on the revised or reconsidered ozone NAAQS for the Atlanta Area.

If this proposed determination is made final and the Atlanta Area continues to demonstrate attainment with the 1997 8-hour ozone NAAQS, the obligation for the State of Georgia to submit for the Atlanta Area an attainment demonstration and associated RACM analysis, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS will remain suspended regardless of whether EPA designates the Atlanta Area as a nonattainment area for purposes of the revised or reconsidered ozone NAAQS. Once the Atlanta Area is designated for the revised or reconsidered ozone NAAQS, it will have to meet all applicable requirements for that designation.

III. What is the background for this action?

On July 18, 1997 (62 FR 38894), EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm) for both the primary and secondary standards. These NAAQS are more stringent than the previous 1-hour ozone NAAQS. Under EPA regulations at 40 CFR part 50, the 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm (*i.e.,* 0.084 ppm when rounding is considered). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "*Comparisons with the Primary and Secondary Ozone Standards*" states:

> The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

On April 30, 2004 (69 FR 23857), EPA published its air quality designations and classifications for the 1997 8-hour ozone NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on June 15, 2004. The Atlanta Area is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton Counties; and was designated nonattainment for the 1997 8-hour ozone NAAQS (*see* 40 CFR part 81).

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

EPA has reviewed the three most recent years of complete, certified, quality assured and quality controlled ambient air monitoring data for the 1997 8-hour ozone NAAQS, consistent with the requirements contained in 40 CFR part 50, as recorded in the EPA Air Quality System (AQS) database for the Atlanta Area. Based on that review, EPA has preliminarily concluded that the Atlanta Area attained the 1997 8-hour ozone NAAQS during the 2008–2010 monitoring period. Under EPA regulations at 40 CFR 50.10, the 1997 8-hour primary and secondary ozone ambient air quality NAAQS are met at an ambient air quality monitoring site when the three-year average of the annual fourth-highest daily maximum 8-hour average concentration is less than or equal to 0.08 ppm, as determined in accordance with Appendix I of 40 CFR part 50.

Table 1 shows the design values (the metrics calculated in accordance with 40 CFR part 50, Appendix I, for determining compliance with the NAAQS) for the 1997 8-hour ozone NAAQS for the Atlanta Area monitors for the years 2008–2010. Table 2 shows the data completeness percentages for the 1997 8-hours ozone NAAQS for the Atlanta Area monitors for the years 2008–2010.

TABLE 1—DESIGN VALUES FOR COUNTIES IN THE ATLANTA, GEORGIA NONATTAINMENT AREA FOR THE 1997 8-HOUR OZONE NAAQS

Location	AQS site ID	2008 (ppm)	2009 (ppm)	2010 (ppm)	2008–2010 Design value (ppm)
Cobb County	GA NATIONAL GUARD MCCOLLUM PARKWAY (13–067–0003).	0.075	0.076	0.079	0.076
Coweta County	UNIVERSITY OF W. GA AT NEWNAN (13–077–0002).	0.075	0.065	0.065	0.068
Dawson County	DAWSONVILLE, GA FORESTRY COMMISSION (13–085–0001).	0.075	0.067	0.073	0.071
Dekalb County	2390–B Wildcat Road Decatur, GA (13–089–0002)	0.087	0.077	0.075	0.079
Douglas County	DOUGLASVILLE W. STRICKLAND ST. (13–097–0004).	0.080	0.072	0.074	0.075

TABLE 1—DESIGN VALUES FOR COUNTIES IN THE ATLANTA, GEORGIA NONATTAINMENT AREA FOR THE 1997 8-HOUR OZONE NAAQS—Continued

Location	AQS site ID	2008 (ppm)	2009 (ppm)	2010 (ppm)	2008–2010 Design value (ppm)
Gwinnett County	GWINNETT TECH 1250 ATKINSON RD (13–135–0002).	0.079	0.073	0.072	0.074
Henry County	HENRY COUNTY EXTENSION OFFICE (13–151–0002).	0.086	0.074	0.078	0.079
Paulding County	YORKVILLE (13–223–0003)	0.072	0.067	0.071	0.070
Rockdale County	CONYERS MONASTERY 3780 GA HWY 212 (13–247–0001).	0.089	0.070	0.076	0.078
Fulton County	CONFEDERATE AVE. (13–121–0055)	0.084	0.077	0.080	0.080

TABLE 2—COMPLETENESS PERCENTAGES FOR OZONE MONITORS IN THE ATLANTA, GEORGIA NONATTAINMENT AREA FOR THE 1997 8-HOUR OZONE NAAQS

Location	AQS site ID	2008 (%)	2009 (%)	2010 (%)	2008–2010 Percentage average (%)
Cobb County	GA NATIONAL GUARD, MCCOLLUM PARKWAY (13–067–0003).	99	99	100	100
Coweta County	UNIVERSITY OF W. GA AT NEWNAN (13–077–0002).	100	97	100	99
Dawson County	DAWSONVILLE, GA FORESTRY COMMISSION (13–085–0001).	99	95	100	98
Dekalb County	2390–B Wildcat Road, Decatur GA (13–089–0002)	99	98	98	98
Douglas County	DOUGLASVILLE W. STRICKLAND ST. (13–097–0004).	97	100	100	99
Gwinnett County	GWINNETT TECH 1250 ATKINSON RD (13–135–0002).	92	100	94	95
Henry County	HENRY COUNTY EXTENSION OFFICE (13–151–0002).	100	100	100	100
Paulding County	YORKVILLE (13–223–0003)	99	100	100	99
Rockdale County	CONYERS MONASTERY 3780 GA HWY 212 (13–247–0001).	98	99	100	99
Fulton County	CONFEDERATE AVE. (13–121–0055)	96	98	99	98

EPA's review of these data indicate that the Atlanta Area has met and continues to meet the 1997 8-hour ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Proposed Action

EPA is proposing to determine that the Atlanta, Georgia 1997 8-hour nonattainment area has attained the 1997 8-hour ozone NAAQS based on 2008–2010 complete, quality-assured, quality-controlled and certified monitoring data. As provided in 40 CFR 51.918, if EPA finalizes this determination, it would suspend the requirements for the State of Georgia to submit, for the Atlanta Area, an attainment demonstration and associated RACM analysis, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS as long as the Area continues to attain the 1997 8-hour ozone NAAQS.

VI. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and it would not impose additional requirements beyond those imposed by state law. 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 (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this proposed 1997 8-hour ozone NAAQS data determination for

the Atlanta Area 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds, Oxides of nitrogen.

Dated: March 17, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Regional Administrator, Region 4.

[FR Doc. 2011–7114 Filed 3–24–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Docket No. FEMA–B–1021]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On November 24, 2008, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 73 FR 70944. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for White County, Arkansas, and Incorporated Areas. Specifically, it addresses the following flooding sources: Deener Creek, Gum Creek Flooding Effects, Little Red River, Overflow Creek Tributary, Red Cut Slough, Red Cut Slough Tributary, Red Cut Slough Tributary 2, and Red Cut Slough Tributary A.

DATES: Comments are to be submitted on or before June 23, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1021, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 73 FR 70944, in the November 24, 2008, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "White County, Arkansas, and Incorporated Areas" addressed the flooding source Deener Creek. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for that flooding source. In addition, it did not include the following flooding sources: Gum Creek Flooding Effects, Little Red River, Overflow Creek Tributary, Red Cut Slough, Red Cut Slough Tributary, Red Cut Slough Tributary 2, and Red Cut Slough Tributary A. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
White County, Arkansas, and Incorporated Areas				
Deener Creek	Approximately 2.08 miles upstream of the Rocky Branch confluence.	None	+237	Unincorporated Areas of White County.
	Approximately 2.42 miles upstream of the Rocky Branch confluence.	None	+240	
Gum Creek Flooding Effects	Just upstream of Collins Road	None	+213	Unincorporated Areas of White County.
	Approximately 0.55 mile upstream of Missouri Pacific Railroad.	None	+228	
Little Red River	Just upstream of U.S. Route 67	None	+211	Unincorporated Areas of White County.
	Approximately 850 feet upstream of Davis Drive	None	+215	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Overflow Creek Tributary	Approximately 500 feet downstream of State Highway 367.	None	+216	Unincorporated Areas of White County.
	Approximately 850 feet upstream of State Highway 367.	None	+234	
Red Cut Slough	Just upstream of Missouri Pacific Railroad	None	+220	City of Beebe, Unincorporated Areas of White County.
	Approximately 1,044 feet downstream of the Red Cut Slough Tributary confluence.	None	+220	
Red Cut Slough Tributary	Just upstream of State Highway 367	None	+224	City of Beebe, Unincorporated Areas of White County.
	Just upstream of West Mississippi Street	None	+235	
Red Cut Slough Tributary 2 ..	At the Red Cut Slough confluence	None	+220	City of Beebe, Unincorporated Areas of White County.
	Approximately 1,050 feet downstream of West Center Street.	None	+230	
Red Cut Slough Tributary A	Just upstream of Missouri Pacific Railroad	None	+224	City of Beebe, Unincorporated Areas of White County.
	Approximately 128 feet upstream of California Street	None	+229	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Beebe

Maps are available for inspection at 321 North Elm Street, Beebe, AR 72012.

Unincorporated Areas of White County

Maps are available for inspection at 119 West Arch Avenue, Searcy, AR 72143.

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

Dated: February 7, 2011.

Sandra K. Knight,

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

[FR Doc. 2011–7082 Filed 3–24–11; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register

Vol. 76, No. 58

Friday, March 25, 2011

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals and free milk for the period from July 1, 2011 through June 30, 2012. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the Richard B. Russell National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

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

FOR FURTHER INFORMATION CONTACT: William Wagoner, Supervisory Program Analyst, School Programs Section, Child Nutrition Division, Food and Nutrition Service (FNS), USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2590.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

The affected programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556, No. 10.558 and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR part 210), the Commodity School Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Summer Food Service Program (7 CFR part 225) and Child and Adult Care Food Program (7 CFR part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

Definition of Income

In accordance with the Department's policy as provided in the Food and Nutrition Service publication *Eligibility Manual for School Meals,* "income," as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources that would be available to pay the price of a child's meal.

"Income," as the term is used in this Notice, does *not* include any income or benefits received under any Federal programs that are excluded from consideration as income by any statutory prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the Richard B. Russell National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 2011 through June 30, 2012. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2011 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar.

This Notice displays only the annual Federal poverty guidelines issued by the Department of Health and Human Services because the monthly and weekly Federal poverty guidelines are not used to determine the Income Eligibility Guidelines. The chart details the free and reduced price eligibility criteria for monthly income, income received twice monthly (24 payments per year), income received every two weeks (26 payments per year) and weekly income.

Income calculations are made based on the following formulas: Monthly income is calculated by dividing the annual income by 12; twice monthly income is computed by dividing annual income by 24; income received every two weeks is calculated by dividing annual income by 26; and weekly

income is computed by dividing annual income by 52. All numbers are rounded upward to the next whole dollar. The numbers reflected in this notice for a family of four in the 48 contiguous States, the District of Columbia, Guam and the territories represent an increase of 1.4% over last year's level for a family of the same size.

BILLING CODE 3410–30–P

INCOME ELIGIBILITY GUIDELINES

Effective from July 1, 2011 to June 30, 2012

HOUSEHOLD SIZE	FEDERAL POVERTY GUIDELINES ANNUAL	REDUCED PRICE MEALS - 185 % ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY	FREE MEALS - 130 % ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY
48 CONTIGUOUS STATES, DISTRICT OF COLUMBIA, GUAM, AND TERRITORIES											
1	10,890	20,147	1,679	840	775	388	14,157	1,180	590	545	273
2	14,710	27,214	2,268	1,134	1,047	524	19,123	1,594	797	736	368
3	18,530	34,281	2,857	1,429	1,319	660	24,089	2,008	1,004	927	464
4	22,350	41,348	3,446	1,723	1,591	796	29,055	2,422	1,211	1,118	559
5	26,170	48,415	4,035	2,018	1,863	932	34,021	2,836	1,418	1,309	655
6	29,990	55,482	4,624	2,312	2,134	1,067	38,987	3,249	1,625	1,500	750
7	33,810	62,549	5,213	2,607	2,406	1,203	43,953	3,663	1,832	1,691	846
8	37,630	69,616	5,802	2,901	2,678	1,339	48,919	4,077	2,039	1,882	941
For each add'l family member, add	3,820	7,067	589	295	272	136	4,966	414	207	191	96
ALASKA											
1	13,600	25,160	2,097	1,049	968	484	17,680	1,474	737	680	340
2	18,380	34,003	2,834	1,417	1,308	654	23,894	1,992	996	919	460
3	23,160	42,846	3,571	1,786	1,648	824	30,108	2,509	1,255	1,158	579
4	27,940	51,689	4,308	2,154	1,989	995	36,322	3,027	1,514	1,397	699
5	32,720	60,532	5,045	2,523	2,329	1,165	42,536	3,545	1,773	1,636	818
6	37,500	69,375	5,782	2,891	2,669	1,335	48,750	4,063	2,032	1,875	938
7	42,280	78,218	6,519	3,260	3,009	1,505	54,964	4,581	2,291	2,114	1,057
8	47,060	87,061	7,256	3,628	3,349	1,675	61,178	5,099	2,550	2,353	1,177
For each add'l family member, add	4,780	8,843	737	369	341	171	6,214	518	259	239	120
HAWAII											
1	12,540	23,199	1,934	967	893	447	16,302	1,359	680	627	314
2	16,930	31,321	2,611	1,306	1,205	603	22,009	1,835	918	847	424
3	21,320	39,442	3,287	1,644	1,517	759	27,716	2,310	1,155	1,066	533
4	25,710	47,564	3,964	1,982	1,830	915	33,423	2,786	1,393	1,286	643
5	30,100	55,685	4,641	2,321	2,142	1,071	39,130	3,261	1,631	1,505	753
6	34,490	63,807	5,318	2,659	2,455	1,228	44,837	3,737	1,869	1,725	863
7	38,880	71,928	5,994	2,997	2,767	1,384	50,544	4,212	2,106	1,944	972
8	43,270	80,050	6,671	3,336	3,079	1,540	56,251	4,688	2,344	2,164	1,082
For each add'l family member, add	4,390	8,122	677	339	313	157	5,707	476	238	220	110

Authority: 42 U.S.C. 1758(b).

Dated: March 18, 2011.

Julia Paradis,

Administrator.

[FR Doc. 2011–6948 Filed 3–24–11; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will meet in Hamilton, Montana. The purpose of the meeting is presentation on research of generating plants that have been built and project reviews.

DATES: The meeting will be held April 26, 2011 at 6:30 p.m.

ADDRESSES: The meeting will be held at 1801 N. First Street. Written comments should be sent to Stevensville RD, 88 Main Street, Stevensville, MT 59870. Comments may also be sent via e-mail to *dritter@fs.fed.us* or via facsimile to 406–777–5461.

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 88 Main Street, Stevensville, MT 59870. Visitors are encouraged to call ahead to 406–777–5461 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Daniel G. Ritter, District Ranger, or Nancy Trotter, Coordinator 406–777–5461.

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. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring biohazards use matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 25, 2011 will have the opportunity to address the Council at those sessions.

Dated: March 17, 2011.

Julie K. King,

Forest Supervisor.

[FR Doc. 2011–7072 Filed 3–24–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee will meet in Winona, Missouri. 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 review proposed forest management projects so that recommendations may be made to the Forest Service on which should be funded through Title II of the Secure Rural Schools and Community Self Determination Act of 2000, as amended in 2008.

DATES: The meeting will be held Thursday, April 21, 2011, 6:30 p.m.

ADDRESSES: The meeting will be held at the Twin Pines Conservation Education Center located on US Highway 60, Rt 1, Box 1998, Winona, MO. Written comments should be sent to David Whittekiend, Designated Federal Official, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO. Comments may also be sent via e-mail to *dwhittekiend@fs.fed.us* or via facsimile to 573–364–6844.

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 Mark Twain National Forest Supervisors Office, 401 Fairgrounds Road, Rolla, MO. Visitors are encouraged to call ahead to 573–341–7404 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Hall, Eleven Point Resource Advisory Committee Coordinator, Mark Twain National Forest, 573–341–7404.

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 meeting will focus on reviewing potential projects that the RAC may recommend for funding. Persons who wish to bring related matters to the attention of the Committee may file written statements with David Whittekiend (address above) before or after the meeting.

Dated: March 21, 2011.

David C. Whittekiend,

Forest Supervisor.

[FR Doc. 2011–7061 Filed 3–24–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23–2011]

Foreign-Trade Zone 41—Milwaukee, WI; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Foreign Trade Zone of Wisconsin, Ltd., grantee of FTZ 41, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 21, 2011.

FTZ 41 was approved by the Board on September 29, 1978 (Board Order 136, 43 FR 46887, 10/11/1978) and expanded on August 4, 1981 (Board Order 178, 46 FR 40718, 8/11/1981), October 18, 1985 (Board Order 315, 50 FR 43749, 10/29/1985), May 27, 1993 (Board Order 641, 58 FR 32512, 6/10/1993), September 4, 1994 (Board Order 694, 59 FR 47115, 9/14/1994) and April 29, 1996 (Board Order 818, 61 FR 21157, 5/9/1996).

The current zone project includes the following sites: *Site 1* (4.83 acres)—Interior Continental Transportation Systems, 1925 East Kelly Lane, Cudahy, Milwaukee County; *Site 2* (120 acres)—West Allis Industrial Center, 640 S. 84th Street, West Allis, Milwaukee County; *Site 3* (300 acres)—Port of Milwaukee, 2323 S. Lincoln Memorial Drive, Milwaukee, Milwaukee County; *Site 4* (166 acres)—Milwaukee County Research Park, U.S. Highway 45 and Watertown Plank Road, Wauwatosa, Milwaukee County; and, *Site 5* (10 acres)—Grandview Industrial Park, 1333 North Grandview Parkway, Sturtevant, Racine County.

The grantee's proposed service area under the ASF would be Kenosha, Milwaukee and Racine Counties, Wisconsin, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Milwaukee Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include existing Sites 2–4 as "magnet" sites. The applicant is also requesting that existing Sites 1 and 5 be included as "usage-driven" sites. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 3 be so exempted. The applicant is also requesting approval of the following "usage-driven" sites: *Proposed Site 6* (24 acres)—Hospira Worldwide, Inc., 10501 South Avenue, Pleasant Prairie, Kenosha County; *Proposed Site 7* (13 acres)—Sigma-Aldrich Corporation, 2905 W. Hope Avenue, Milwaukee, Milwaukee County; *Proposed Site 8* (2.6 acres)—Sigma-Aldrich Corporation, 230 South Emmber Lane, Milwaukee, Milwaukee County; and, *Proposed Site 9* (79.7 acres)—Sigma-Aldrich Corporation, 6000 N. Teutonia Avenue, Milwaukee, Milwaukee County. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 41's authorized subzones.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 24, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 8, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site,

which is accessible via *http://www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: March 21, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–7139 Filed 3–24–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Procedures for Acceptance or Rejection of a Rated Order

AGENCY: Bureau of Industry and Security, 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.

DATES: Written comments must be submitted on or before May 24, 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 Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection involves the exchange of rated order information between customers and suppliers. Any person (supplier) who receives a priority rated order under Defense Priorities and Allocations Systems regulation (15 CFR 700) must notify the customer of acceptance or rejection of that order within a specified period of time. Also, if shipment against a priority rated order will be delayed, the supplier must immediately notify the customer. The respondents are required to retain a copy of the exchange transaction for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and the Selective Service Act of 1948 (50 U.S.C. App. 468). The purpose of this authority is to ensure the timely delivery of goods and services to meet current national defense and civil emergency preparedness program requirements.

II. Method of Collection

Rated order information may be transmitted or stored electronically or on paper.

III. Data

OMB Control Number: 0694–0092.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 734,650.

Estimated Time per Response: 1 to 15 minutes.

Estimated Total Annual Burden Hours: 21,380.

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 21, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–7021 Filed 3–24–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China; Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 25, 2011

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Fred Baker, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4947 or (202) 482–2924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2010, the Department of Commerce (the Department) published in the **Federal Register** the initiation of two new shipper reviews (NSRs) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China, covering the period of February 1, 2010, to July 31, 2010. *See Certain Preserved Mushrooms From the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews,* 75 FR 62108 (October 7, 2010). The current deadline for the preliminary results of these reviews is March 28, 2011.

Extension of Time Limits for Preliminary Results of Review

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(i)(1), require the Department to complete the preliminary results of a NSR of an antidumping duty order within 180 days after the date on which the review is initiated. However, the Department may extend the deadline for completion of the preliminary results of a NSR to 300 days if it determines the case is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214 (i)(2).

The Department finds that these NSRs are extraordinarily complicated and, therefore, it requires additional time to complete the preliminary results. Specifically, the Department requires additional time to analyze certain entry documents submitted by Guangxi Hengyong Industrial & Commercial Dev.

Ltd. and Zhangzhou Hongda Import & Export Trading Co., Ltd. Accordingly, the Department is extending the time limit for completion of the preliminary results of these NSRs by 120 days (*i.e.,* until July 26, 2011). We intend to issue the final results no later than 90 days after publication of the preliminary results.

This extension is issued and published in accordance with section 751(a)(2)(B)(iv) and 19 CFR 351.214(i)(2).

Dated: March 18, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–7131 Filed 3–24–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On March 18, 2011, Maquilacero S.A. de C.V. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel Review was requested of the U.S. Department of Commerce's final determination regarding Light-Walled Rectangular Pipe and Tube from Mexico, Final Results of 2008–2009 Antidumping Duty Administrative Review. This determination was published in the **Federal Register** (76 FR 9547), on February 18, 2011. The NAFTA Secretariat has assigned Case Number USA–MEX–2011–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement ("Agreement") established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on March 18, 2011, requesting a panel review of the determination and order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is April 18, 2011);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 2, 2011); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in panel review and the procedural and substantive defenses raised in the panel review.

Dated: March 21, 2011.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2011–7024 Filed 3–24–11; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of the American Petroleum Institute's Standards Activities

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to develop or revise standards and request for public comment and participation in standards development.

SUMMARY: The American Petroleum Institute (API), with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice lists the standardization efforts currently being conducted by API committees. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the standards referenced.

ADDRESSES: American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005; telephone (202) 682–8000, *http://www.api.org.*

FOR FURTHER INFORMATION CONTACT: All contact individuals listed in the supplementary information section of this notice may be reached at the American Petroleum Institute.

SUPPLEMENTARY INFORMATION:

Background

The American Petroleum Institute develops and publishes voluntary standards for equipment, materials, operations, and processes for the petroleum and natural gas industry. These standards are used by both private industry and by governmental agencies. All interested persons should contact the appropriate source as listed for further information.

Exploration & Production

API HF3, *Practices for Mitigating Surface Impacts Associated with Hydraulic Fracturing,* 1st Ed.

Spec Q2, *Quality Management Systems for Service Supply Organizations for the Petroleum and Natural Gas Industries,* 1st Ed.

RP 2EQ, *Seismic Design Procedures and Criteria for Offshore Structures,* 1st Ed.

RP 2FPS, *Recommended Practice for Planning, Designing, and Constructing Floating Production Systems,* 2nd Ed.

RP 2GEO, *Geotechnical and Foundation Design Considerations,* 1st Ed.

RP 2MET, *Metocean Design and Operating Considerations,* 1st Ed.

Spec 2SF, *Manufacture of Structural Steel Forgings for Primary Offshore Applications,* 1st Edition.

Spec 5CT, *Specification for Casing and Tubing,* 9th Ed.

Spec 5L–A3, *Addendum 3 to Specification for Line Pipe,* 44th Ed.

RP 5L2, *Internal Coating of Line Pipe for Non-Corrosive Gas Transmission Service,* 5th Ed.

RP 5L7, *Recommended Practice for Unprimed Internal Fusion Bonded Epoxy Coating of Line Pipe,* 3rd Ed.

RP 5LT, *Recommended Practice for Truck Transportation of Line Pipe,* 1st Ed.

RP 6HT, *Heat Treatment and Testing of Large Cross Section and Critical Section Components,* 2nd Ed.

Spec 7–1–A3, *Addendum 3 to Specification for Rotary Drill Stem Elements,* 1st Ed.

RP 8B, *Inspection, Maintenance, Repair, and Remanufacture of Hoisting Equipment,* 8th Ed.

Spec 8C, *Drilling and Production Hoisting Equipment (PSL 1 and PSL 2),* 5th Ed.

Spec 9A, *Specification for Wire Rope,* 26th Ed.

RP 9B, *Application, Care, and Use of Wire Rope for Oil Field Service,* 13th Ed.

Spec 11AX, *Specification for Subsurface Sucker Rod Pumps and Fittings,* 13th Ed.

RP 11BR, *Recommended Practice for the Care and Handling of Sucker Rods,* 10th Ed.

Spec 11E, *Specification for Pumping Units,* 19th Ed.

RP 11G, *Recommended Practice for Installation and Lubrication of Pumping Units,* 5th Ed.

RP 11V11, *Application of Dynamic Simulation Techniques for Designing and/or Optimizing Gas-lift Wells and Systems,* 1st Ed.

RP 13K, *Chemical Analysis of Barite,* 3rd Ed.

Spec 15HR, *High Pressure Fiberglass Line Pipe,* 4th Ed.

Spec 17D, *Subsea Wellhead and Christmas Tree Equipment,* 2nd Ed.

TR 17TR4, *Considerations for Equipment Pressure Ratings,* 1st Ed.

TR 17TR5, *Avoidance of Blockages in Subsea Production Control and Chemical Injection Systems,* 1st Ed.

TR 17TR6, *Attributes of Production Chemicals in Subsea Production Systems,* 1st Ed.

Spec 19G3, *Running Tools, Pulling Tools and Kick-over Tools and Latches for Side-pocket Mandrels,* 1st Ed.

RP 19G4, *Practices for Side-pocket Mandrels and Related Equipment,* 1st Ed.

Std 53, *Blowout Prevention Equipment Systems for Drilling Operations,* 4th Ed.

RP 96, *Deepwater Well Design Considerations,* 1st. Ed.

Bull 97, *Well Control Interface Document Guidelines,* 1st Ed.

FOR FURTHER INFORMATION CONTACT: Roland Goodman, Standards Department, e-mail: (*goodmanr@api.org*).

Meetings/Conferences: The Exploration & Production Standards Conference will be held in San Francisco, California, June 27–July 1, 2011. Interested parties may visit the API Web site at *http://www.api.org/meetings/* for more information regarding participation in these meetings.

Marketing

RP 1615, *Installation of Underground Petroleum Storage Systems,* 6th Ed.

RP 2611, *Terminal Piping Inspection,* 1st Ed.

FOR FURTHER INFORMATION CONTACT: Steve Crimaudo, Standards Department, e-mail: (*crimaudos@api.org*).

Petroleum Measurement

MPMS Chapter 2.2D, *Calibration of Upright Cylindrical Tanks Using the Internal Electro-Optical Distance Ranging (EODR) Method,* 2nd Ed.

MPMS Chapter 4.5, *Master-Meter Provers,* 3rd Ed.

MPMS Chapter 5.8, *Measurement of Liquid Hydrocarbons by Ultrasonic Flowmeters Using Transit Time Technology,* 2nd Ed.

MPMS Chapter 9.1, *Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method,* 3rd Ed.

MPMS Chapter 9.2, *Standard Test Method for Density or Relative Density of Light Hydrocarbons by Pressure Hydrometer,* 3rd Ed.

MPMS Chapter 9.3, *Standard Test Method for Density, Relative Density, and API Gravity of Crude Petroleum and Liquid Petroleum Products by Thermohydrometer Method,* 3rd Ed.

MPMS Chapter 10.9, *Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration,* 3rd Ed.

MPMS Chapter 11.3.3, *Ethanol Density And Volume Correction Factors,* 1st Ed.

MPMS Ch. 12.1.1, *Calculation of Static Petroleum Quantities,* Part 1—*Upright Cylindrical Tanks and Marine Vessels,* 3rd Ed.

MPMS Ch. 12.1.2, *Calculation of Static Petroleum Quantities,* Part 2—*Calculation Procedures for Tank Cars,* 2nd Ed.

MPMS Ch. 14.3.1, *Concentric, Square-Edged Orifice Meters,* Part 1—*General Equations and Uncertainty Guidelines,* 4th Ed.

MPMS Chapter 14.3.3, *Concentric, Square-Edged Orifice Meters,* Part 3—*Natural Gas Applications,* 4th Ed.

MPMS Chapter 14.7, *Mass Measurement of Natural Gas Liquids,* 4th Ed.

MPMS Chapter 14.9, *Measurement of Natural Gas by Coriolis Meter,* 1st Ed.

MPMS Chapter 17.5, *Guidelines for Cargo Analysis and Reconciliation,* 3rd Ed.

MPMS Chapter 17.6, *Guidelines for Determining Fullness of Pipelines Between Vessels and Shore Tanks,* 2nd Ed.

MPMS Chapter 17.9, *Vessel Experience Factor (VEF),* 2nd Ed.

MPMS Chapter 19.1, *Evaporative Loss From Fixed-roof Tanks* (Previously Publication 2518), 4th Ed.

MPMS Chapter 19.2, *Evaporative Loss From Floating-roof Tanks* (previously Publications 2517 and 2519), 3rd Ed.

MPMS Chapter 19.3, Part H, *Tank Seals and Fittings Certification—Administration* (also supersedes and incorporates the relevant sections of API *MPMS* Chapter 19.3 Parts F and G), 2nd Ed.

MPMS Chapter 19.4, *Evaporative Loss Reference Information and Speciation Methodology,* 3rd. Ed

MPMS Chapter 20.3, Multiphase Flow Measurement, 1st Ed.

MPMS Chapter 20.4, *Draft Standard for Phase Behavior Application in Upstream Measurement and Allocation,* 1st Ed.

MPMS Chapter 20.6, *Recommended Practice for Production Allocation Methodologies and Techniques,* 1st Ed.

MPMS Chapter 21.1, *Electronic Gas Measurement,* 2nd Ed.

MPMS Chapter 22.2, *Testing Protocols—Differential Pressure Flow Measurement Devices,* 2nd Ed.

MPMS Chapter 22.4, *Testing Protocols—Pressure, Differential Pressure, and Temperature Measuring Devices,* 1st Ed.

MPMS Chapter 22.5, *Testing Protocols—Electronic Flow Computer Calculations,* 1st Ed.

TR 2571, *Fuel Gas Measurement,* 1st Ed.

FOR FURTHER INFORMATION CONTACT: Paula Watkins, Standards Department, e-mail: (*watkinsp@api.org*)

Meetings/Conferences: The Spring Committee on Petroleum Measurement Meeting will be held in Dallas, Texas, March 7–10, 2011. The Fall Committee on Petroleum Measurement Meeting will be held in Savannah, Georgia, October 24–27, 2011. Interested parties may visit the API Web site at *http://www.api.org/meetings/* for more information regarding participation in these meetings.

Pipeline

Std 1104, *Welding of Pipelines and Related Facilities,* 21st Ed.

Std 1160, *Managing System Integrity for Hazardous Liquid Pipelines,* 2nd Ed.

RP 1161, *Guidance Document for the Qualification of Liquid Pipeline Personnel,* 2nd Ed.

FOR FURTHER INFORMATION CONTACT: Ed Baniak, Standards Department, e-mail: (*baniake@api.org*).

Refining

RP 553, *Refinery Valves and Accessories for Control and Safety Instrumented Systems,* 2nd Ed.

RP 556, *Instrumentation, Control, and Protective Systems for Gas Fired Heaters,* 2nd Ed.

Std 616, *Gas Turbines for the Petroleum, Chemical and Gas Industry Services,* 5th Ed.

Std 622, *Type Testing of Process Valve Packing for Fugitive Emissions,* 2nd Ed.

Std 650–A–3, *Addendum 3 to Welded Tanks for Oil Storage,* 11th Ed.

Std 675, *Positive Displacement Pumps—Controlled Volume,* 3rd Ed.

Std 685, *Sealless Centrifugal Pumps for Petroleum, Petrochemical, and Gas Industry Services,* 2nd Ed.

RP 688, *Pulsation and Vibration Control in Positive Displacement Machinery Systems for Petroleum, Petrochemical, and Natural Gas Industry Services,* 1st Ed.

RP 751, *Safe Operation of Hydrofluoric Acid Alkylation Units,* 4th Ed.

RP 756, *Management of Hazards Associated with Location of Process Plant Tents and Fabric Structures,* 1st Ed.

Std 780, *Security Vulnerability Assessment Methodology for the Petroleum and Petrochemical Industries,* 1st Ed.

TR 934–B, *Fabrication Considerations for Vanadium-Modified Cr-Mo Steel Heavy Wall Pressure Vessels,* 1st Ed.

TR 938–C, *Use of Duplex Stainless Steels in the Oil Refining Industry,* 2nd Ed.

FOR FURTHER INFORMATION CONTACT: David Soffrin, Standards Department, e-mail: (*soffrind@api.org*).

Meetings/Conferences: The Spring Refining and Equipment Standards Meeting will be held in Seattle, Washington, May 16–18, 2011. The Fall Refining and Equipment Standards Meeting will be held in Los Angeles, California, November 14–16, 2011. Interested parties may visit the API Web site at *http://www.api.org/meetings/* for more information regarding participation in these meetings.

Safety and Fire Protection

RP 2001, *Fire Protection in Refineries,* 9th Ed.

RP 2028, *Flame Arresters in Piping Systems,* 4th Ed.

RP 2030, *Application of Fixed Water Spray Systems for Fire Protection in the Petroleum and Petrochemical Industries,* 4th Ed.

RP 2218, *Fireproofing Practices in Petroleum and Petrochemical Processing Plants,* 3rd Ed.

Std 2220, *Contractor Safety Performance Process,* 3rd Ed.

RP 2221, *Contractor and Owner Safety Program Implementation,* 3rd Ed.

RP 2350, *Overfill Protection for Storage Tanks in Petroleum Facilities,* 4th Ed.

Publ 2510A, *Fire Protection Considerations for the Design and Operation of Liquefied Petroleum Gas (LPG) Storage Facilities,* 3rd Ed.

FOR FURTHER INFORMATION CONTACT: David Soffrin, Standards Department, e-mail: (*soffrind@api.org*).

For Additional Information on the overall API standards program, Contact: David Miller, Standards Department, e-mail: *miller@api.org.*

Dated: March 15, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–7121 Filed 3–24–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA320

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public hearing series.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings regarding Amendment 18 to Coastal Migratory Pelagic Fishery Management Plan (FMP) for the Gulf of Mexico and South Atlantic Region and Amendment 10 to the Spiny Lobster FMP for the Gulf and South Atlantic Region. Public hearings in Duck Key and Key West, Florida are joint hearings with the Gulf of Mexico Fishery Management Council. *See* **SUPPLEMENTARY INFORMATION.**

DATES: The series of 7 public hearings will be held April 11, 2011 through April 20, 2011. The hearings will be held from 5 p.m. until 7 p.m. Council staff will present an overview of each amendment and will be available for informal discussions and to answer questions. Members of the public will have an opportunity to go on record at any time during the meeting hours to record their comments on the public hearing topics for consideration by both Councils. Local Council representatives will attend the meetings and take public comment. Written comments will be accepted from March 25, 2011 until 5 p.m. on April 29, 2011. See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** for locations of the hearings. Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405, or via e-mail to: *MackAmend18Comment@safmc.net* for Amendment 18 to the Coastal Migratory Pelagic FMP; and *SpinyLobAmend10Comment@safmc.net* for Amendment 10 to the Spiny Lobster FMP. Written comments will be received from March 25, 2011 until 5 p.m. on April 29, 2011.

Copies of the public hearing documents are available by contacting Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571–4366 or toll free at (866) SAFMC–10. Copies will also be available online at *http://www.safmc.net* as they become available.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571–4366; *fax:* (843) 769–4520; *e-mail address: kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Amendment 18 to the Coastal Migratory Pelagics FMP addresses management measures for both Gulf and South Atlantic migratory groups of king mackerel, Spanish mackerel and cobia. The amendment addresses establishment of Annual Catch Limits and accountability measures for these species as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The amendment also includes alternatives for: Modifications to the Fishery Management Unit (FMU), framework procedures to incorporate stock assessment information to allow adjustments for a greater range of management measures, establishment of separate migratory groups of cobia (between the Gulf and South Atlantic), sector allocations, and possible bag limit reductions.

Amendment 10 to the Spiny Lobster FMP for the Gulf and South Atlantic Regions also establishes ACLs and AMs for Caribbean spiny lobster as required by the Magnuson-Stevens Act and contains additional alternatives addressing: Modifications to the FMU, updates to protocol for Enhanced Cooperative Management, regulations regarding the possession of undersized lobsters or "shorts" as attractants for the commercial trap fishery, requirements for tailing permits, sector allocations, limiting spiny lobster fishing in some areas to protect threatened Acropora corals, and requirements for gear marking for trap lines.

Public Hearing and Scoping Meeting Schedule

1. April 11, 2011—Hilton New Bern/Riverfront, 100 Middle Street, New Bern, NC 28560; telephone: (252) 638–3585;

2. April 12, 2011—Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC 29418; telephone: (843) 308–9330;

3. April 13, 2011—Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; telephone: (912) 748–8888;

4. April 14, 2011—Crowne Plaza Jacksonville Riverfront, 1201 Riverplace Boulevard, Jacksonville, FL 32207; telephone: (904) 398–8800;

5. April 18, 2011—Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, FL 32920; telephone: (321) 784–0000;

6. April 19, 2011—Hawks Cay Resort, 61 Hawks Cay Boulevard, Duck Key, FL 33050; telephone: (305) 743–7000; and

7. April 20, 2011—Doubletree Grand Key, 3990 South Roosevelt Boulevard, Key West, FL 33040; telephone: (305) 293–1818.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) 3 days prior to the start of each meeting.

Dated: March 22, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–7083 Filed 3–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of solicitation for nominations for potential National Sea Grant Advisory Board members.

SUMMARY: This notice responds to Section 209 of the Sea Grant Program Improvement Act of 1976 (Pub. L. 94–461, 33 U.S.C. 1128), which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the National Sea Grant Advisory Board, an advisory committee that provides advice on the implementation of the National Sea Grant College Program.

DATES: Solicitation of nominations is open ended: Resumes may be sent to the address specified at any time.

ADDRESSES: Nominations should be sent to Ms. Elizabeth J. Ban; Designated Federal Officer, National Sea Grant Advisory Board; National Sea Grant College Program; 1315 East-West Highway, Room 11843; Silver Spring, Maryland 20910. Nominations (Word, PDF or in text of e-mail) may be sent via e-mail to *Elizabeth.Ban@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth J. Ban; Designated Federal Officer, National Sea Grant Advisory Board; National Oceanic and Atmospheric Administration, National Sea Grant College Program; 1315 East-West Highway, Room 11843; Silver Spring, Maryland 20910; *e-mail: Elizabeth.Ban@noaa.gov,* phone 301–734–1082.

SUPPLEMENTARY INFORMATION: Established by Section 209 of the Act and as amended the National Sea Grant College Program Amendments Act of 2008 (Pub. L. 110–394), the duties of the Board are as follows:

(1) In general. The Board shall advise the Secretary and the Director concerning—

(A) Strategies for utilizing the sea grant college program to address the Nation's highest priorities regarding the understanding, assessment, development, management, utilization, and conservation of ocean, coastal, and Great Lakes resources;

(B) The designation of sea grant colleges and sea grant institutes; and

(C) Such other matters as the Secretary refers to the Board for review and advice.

(2) Biennial Report—The Board shall report to the Congress every two years on the state of the national sea grant college program. The Board shall indicate in each such report the progress made toward meeting the priorities identified in the strategic plan in effect under section 204 (c). The Secretary shall make available to the Board such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties under this title. The Secretary shall make available to the Board such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties.

The Board shall consist of 15 voting members who shall be appointed by the Secretary. The Director and a director of a Sea Grant program who is elected by the various directors of Sea Grant programs shall serve as nonvoting members of the Board. Not less than 8 of the voting members of the Board shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, marine affairs and resource management, coastal management, extension services, State government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, management, utilization, or conservation of ocean, coastal, and Great Lakes resources. No individual is eligible to be a voting member of the Board if the individual is (A) the director of a Sea Grant college or Sea Grant institute; (B) an applicant for, or beneficiary (as determined by the Secretary) of, any grant or contract under section 205 [33 USCS § 1124]; or (C) a full-time officer or employee of the United States. The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Board members are appointed for a 4-year term.

Dated: March 22, 2011.

Mark E. Brown,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–7071 Filed 3–24–11; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Updates to List of National System of Marine Protected Areas (MPAs)

AGENCY: NOAA, Department of Commerce (DOC).

ACTION: Notice of updates to the List of National System of Marine Protected Areas (MPAs) and response to comments on nominations of existing MPAs to the national system.

SUMMARY: In August 2010, NOAA and the Department of the Interior (DOI) invited Federal, State, commonwealth, and territorial MPA programs with potentially eligible existing MPAs to nominate their sites to the national system of MPAs (national system). A total of 39 nominations were received, including seven from the American Samoa Department of Marine and Wildlife Resources and 32 from the California Department of Fish and Game. Following a 30-day public review period, no public comments were received by the National Marine Protected Areas Center (MPA Center). The American Samoa Department of Marine and Wildlife Resources and the California Department of Fish and Game, as the managing agencies, were asked to make a final determination of sites to nominate to the national system. Finding them to be eligible for the national system, the MPA Center has accepted the nominations for 39 sites and placed them on the List of National System MPAs.

The national system and the nomination process are described in the *Framework for the National System of Marine Protected Areas of the United States of America* (Framework), developed in response to Executive Order 13158 on Marine Protected Areas. The final Framework was published on November 19, 2008, and provides guidance for collaborative efforts among Federal, State, commonwealth, territorial, tribal and local governments and stakeholders to develop an effective and well coordinated national system that includes existing MPAs meeting national system criteria as well as new sites that may be established by managing agencies to fill key conservation gaps in important ocean areas.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, NOAA, at 301–713–3100, ext. 136 or via e-mail at *mpa.comments@noaa.gov.* A detailed electronic copy of the List of National System MPAs is available for download at *http://www.mpa.gov.*

SUPPLEMENTARY INFORMATION:

Background on National System

The national system of MPAs is made up of member MPA sites, networks and systems established and managed by Federal, State, commonwealth, territorial, tribal and/or local governments that collectively enhance conservation of the nation's natural and cultural marine heritage and represent its diverse ecosystems and resources. Although participating sites continue to be managed independently, national system MPAs also work together at the regional and national levels to achieve common objectives for conserving the nation's important natural and cultural resources, with emphasis on achieving the priority conservation objectives of the Framework. MPAs include sites with a wide range of protection, from multiple use areas to no take reserves where all extractive uses are prohibited. The term MPA refers only to the marine portion of a site (below the mean high tide mark) that may include both terrestrial and marine components.

The national system is a mechanism to foster greater collaboration among participating MPA sites and programs in order to enhance stewardship in the waters of the United States. The act of joining the national system does not create new MPAs, or create new restrictions for the existing MPAs that become members. In fact, a site must have existing protections of natural and/or cultural resources in place in order to be eligible to join the national system, as well as meet other criteria described in the Framework. However, joining the national system does not establish new regulatory authority or change existing regulations in any way, nor does it require changes affecting the designation process or management of member MPAs. Nor does it bring State, territorial, tribal or local sites under Federal authority.

Benefits of joining the national system, which are expected to increase over time as the system matures, include a facilitated means to work with other sites in the MPA's region, and nationally on issues of common conservation concern; fostering greater public and international recognition of U.S. MPAs and the resources they protect; priority in the receipt of available technical and other support for cross-cutting needs; and the opportunity to influence federal and regional ocean conservation and management initiatives (such as Coastal and Marine Spatial Planning, integrated ocean observing systems, systematic monitoring and evaluation, targeted outreach to key user groups, and helping to identify and address MPA research needs). In addition, the national system provides a forum for coordinated regional planning about place-based conservation priorities that does not otherwise exist.

Nomination Process

The Framework describes two major focal areas for building the national system of MPAs—a nomination process to allow existing MPAs that meet the entry criteria to become part of the system and a collaborative regional gap analysis process to identify areas of significance for natural or cultural resources that may merit additional protection through existing Federal, State, commonwealth, territorial, tribal or local MPA authorities. A call for nominations is issued annually, and may also be issued at the request of an MPA management agency. This round of nominations began on August 19, 2010 and the deadline for nominations was November 19, 2010. A public comment period was held from February 3, 2011 through March 7, 2011.

There are three entry criteria for existing MPAs to join the national system, plus a fourth for cultural heritage. Sites that meet all pertinent criteria are eligible for the national system.

1. Meets the definition of an MPA as defined in the Framework.
2. Has a management plan (can be site-specific or part of a broader programmatic management plan; must have goals and objectives and call for monitoring or evaluation of those goals and objectives).
3. Contributes to at least one priority conservation objective as listed in the Framework (*see* below).
4. Cultural heritage MPAs must also conform to criteria for the National Register for Historic Places.

Additional sites not currently meeting the management plan criterion can be evaluated for eligibility to be nominated to the system on a case-by-case basis based on their ability to fill gaps in the national system coverage of the priority conservation objectives and design principles described in the Framework.

The MPA Center used existing information in the MPA Inventory to determine which MPAs meet the first and second criteria. The inventory is online at *http://www.mpa.gov/dataanalysis/mpainventory/* and potentially eligible sites are posted online at *http://www.mpa.gov/nationalsystem/nationalsystemlist/.* As part of the nomination process, the

managing entity for each potentially eligible site is asked to provide information on the third and fourth criteria.

Updates to List of National System MPAs

The following MPAs have been nominated by the American Samoa Department of Marine and Wildlife Resources and the California Department of Fish and Game to join the national system of MPAs. The complete List of National System MPAs, which now includes 297 members, is available at *http://www.mpa.gov.*

American Samoa

Alofau Village Marine Protected Area,
Amaua and Auto Village Marine Protected Area,
Fagamalo Village Marine Protected Area,
Masausi Village Marine Protected Area,
Matuu and Faganeanea Village Marine Protected Area,
Poloa Village Marine Protected Area,
Vatia Village Marine Protected Area.

California

Point Arena State Marine Conservation Area,
Sea Lion Cove State Marine Conservation Area,
Saunders Reef State Marine Conservation Area,
Del Mar Landing State Marine Reserve,
Stewarts Point State Marine Reserve,
Salt Point State Marine Conservation Area,
Gerstle Cove State Marine Reserve,
Russian River State Marine Recreational Management Area,
Russian River State Marine Conservation Area,
Bodega Head State Marine Reserve,
Bodega Head State Marine Conservation Area,
Estero Americano State Marine Recreational Management Area,
Estero de San Antonio State Marine Recreational Management Area,
Drakes Estero State Marine Conservation Area,
Estero de Limantour State Marine Reserve,
Point Reyes State Marine Reserve,
Point Reyes State Marine Conservation Area,
Duxbury State Marine Conservation Area,
Southeast Farallon Island State Marine Reserve,
Southeast Farallon Island State Marine Conservation Area,
Montara State Marine Reserve,
Pillar Point State Marine Conservation Area,
Point Reyes Special Closure,
Point Resistance Special Closure,
Double Point/Stormy Stack Special Closure,
Egg (Devil's Slide) Rock to Devil's Slide Special Closure,
North Farallon Islands & Isle of St. James Special Closure,
Southeast Farallon Special Closure A,
North Farallon Islands State Marine Reserve,
Southeast Farallon Special Closure B,
Stewarts Point State Marine Conservation Area.

Response to Public Comments

On February 3, 2011, NOAA and DOI (agencies) published the Nomination of Existing Marine Protected Areas (MPAs) to the National System of Marine Protected Areas for public comment, for the nomination of thirty-nine existing MPAs. By the end of the 30-day comment period, no public comments had been received.

Dated: March 18, 2011.

David M. Kennedy,

Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–7036 Filed 3–24–11; 8:45 am]

BILLING CODE P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the procurement list.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete a product and services previously furnished by such agencies.

Comments Must be Received on or Before: 4/25/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products:

NSN: MR 350—Containers, Storage, 12PG.
NSN: MR 351—Containers, Storage, 20PG.
NSN: MR 1120—Bag, Storage, Vacuum Sealed, 6PG.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: MILITARY RESALE–DEFENSE COMMISSARY AGENCY, FORT LEE, VA.
Coverage: C–List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Services:

Service Type/Location: Grounds Maintenance, Hannah Houses & adjacent property, 157–159 Conception Street, Mobile, AL.

NPA: GWI Services, Inc., Mobile, AL.
Contracting Activity: GENERAL SERVICES ADMINISTRATION/PUBLIC BUILDINGS SERVICE, PROPERTY MANAGEMENT CONTRACTS, ATLANTA, GA.
Service Type/Location: Mailroom Operation, IRS, 290 North D Street, San Bernardino, CA.
NPA: ServiceSource, Inc., Alexandria, VA (prime).
Pacific Coast Community Services, Richmond, CA (subcontractor).
Contracting Activity: DEPT OF TREAS/INTERNAL REVENUE SERVICE, IRS/CONTRACTS & ACQUISITION DIVISION NATIONAL OFFICE, WASHINGTON, DC.
Service Type/Locations: Mail Management Support Service, Official Mail Center Indian Head, 4072 N Jackson Road, Suite 101, Indian Head, MD.
NSA–PHILADELPHIA, Building 27D, 700 Robbins Avenue, Philadelphia, PA.
NSA—MECHANICSBURG, Building 112, 5450 Carlisle Pike, Mechanicsburg, PA.
Navy Mail Center Naval Air Station, 1155 Rosenbaum Ave, Meridian, MS.
NPA: NewView Oklahoma, Inc., Oklahoma City, OK.
Contracting Activity: DEPARTMENT OF THE NAVY, COMMANDER, FLEET AND INDUSTRIAL SUPPLY CENTER, SAN DIEGO, CA.
FISCN SMD NDW Postal Division Code 415.74, 2822 Doherty Drive, SW., Ste 1000, Joint Base Anacostia Bolling DC.
REGIONAL NAVY MAIL CENTER, FLEET & INDUSTRIAL SUPPLY CENTER NORFOLK, 9225 Third Avenue, Norfolk, VA.
NPAs: NewView Oklahoma, Inc., Oklahoma City, OK (prime).
ServiceSource, Inc., Alexandria, VA (subcontractor).
Contracting Activity: DEPARTMENT OF THE NAVY, COMMANDER, FLEET AND INDUSTRIAL SUPPLY CENTER, SAN DIEGO, CA.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the product and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for deletion from the Procurement List.

End of Certification

The following product and services are proposed for deletion from the Procurement List:

Product:

Cover Access.

NSN: 1560–00–870–1656.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity: DEFENSE LOGISTICS AGENCY AVIATION, RICHMOND, VA.

Services:

Service Type/Locations: Janitorial/Custodial.
U.S. Army Reserve Center: York, SC.
U.S. Army Reserve Center, 515 South Cherry Road, Rock Hill, SC.
NPA: York County Mental Retardation and Developmental Disabilities Board, Rock Hill, SC.
Contracting Activity: DEPT OF THE ARMY, XR W40M NATL REGION CONTRACT OFC, WASHINGTON, DC.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2011–7093 Filed 3–24–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA–DR Agreement")

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

DATES: *Effective Date:* Date of Publication.

SUMMARY: The Committee for the Implementation of Textile Agreements ("CITA") has determined that certain faux suede bonded with faux fur pile fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

For Further Information On-Line: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf under "Approved Requests," Reference number: 152.2011.02.25. Fabric.SquireSandersforLevyGroupInc.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("CAFTA–DR Implementation Act"), Public Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background:

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR *(Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) ("CITA's procedures").

On February 25, 2011, the Chairman of CITA received a request for a Commercial Availability determination ("Request") from the Levy Group, Inc. for certain faux suede bonded to faux fur pile fabric. On February 27, 2011, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply ("Response") must be submitted by March 11, 2011, and any Rebuttal Comments to a Response ("Rebuttal") must be submitted by March 17, 2011, in accordance with Sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request

advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and Section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

Specifications: Certain Faux Suede Bonded With Faux Fur Pile Fabric

HTS: 6001.10.2000
Fabric Type: Faux suede bonded to faux fur pile.
Fiber Content:
Faux Suede Face: 100% polyester.
Faux Fur Pile Back: 40–60% polyester; 40–60% acrylic.
Yarn Size:
Faux Suede Face:
Metric: 45 metric/96 filaments.
English: 200d/96 filaments.
Faux Fur Pile Back:
Metric: Acrylic—3000 metric; Polyester—3000 metric.
English: Acrylic—3d; Polyester—3d.
Thread Count:
Metric: 15.24/singles.
English: 9/singles.
Weight: 630–660 grams per sq. meter.
Width:
Metric: 142–147 cm.
English: 56–58 inches, 57 cuttable.
Weave: Both sides knit.
Coloration: Both sides piece dyed.
Finishing: Bonded (with sponge lamination), washed, polished, and tumbled dried.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2011–7142 Filed 3–24–11; 8:45 am]

BILLING CODE P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, March 30, 2011, 10 a.m.–11.a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

MATTER TO BE CONSIDERED: *Briefing Matter:* Toddler Beds—Final Rule.

A live Webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: March 22, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–7158 Filed 3–23–11; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, March 30, 2011; 11 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: March 22, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–7159 Filed 3–23–11; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0018; Docket 2011–0079; Sequence 2]

Federal Acquisition Regulation; Information Collection; Certification of Independent Price Determination and Parent Company and Identifying Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public 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 certification of independent price determination and parent company and identifying data.

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 24, 2011.

ADDRESSES: Submit comments identified by Information Collection 9000–0018 by any of the following methods:

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

Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0018" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0018". Follow the instructions provided at the "Submit a Comment" screen. Please include your

name, company name (if any), and "Information Collection 9000–0018" 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 9000–0018.

Instructions: Please submit comments only and cite Information Collection 9000–0018, 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: Mr. Anthony Robinson, Procurement Analyst, Contract Policy Branch, GSA (202) 501–2658 or e-mail *Anthony.robinson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (*e.g.,* collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General.

As a first step in assuring that Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

B. Annual Reporting Burden

Respondents: 64,250.
Responses Per Respondent: 20.
Total Responses: 1,285,000.
Hours Per Response: .01.
Total Burden hours: 12,850.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Branch (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data, in all correspondence.

Dated: March 2, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

[FR Doc. 2011–7079 Filed 3–24–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meeting of the Missile Defense Advisory Committee

AGENCY: Missile Defense Agency (MDA), DoD.

ACTION: Notice of closed meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place.

Name of Committee: Missile Defense Advisory Committee.

Dates of Meeting: Thursday, March 24, 2011.

Times: 8 a.m. to 5:30 p.m. Security clearance and visit requests are required for access.

Location: 7100 Defense Pentagon, Washington, DC 20301–7100.

Purpose of the Meeting: At this meeting, the Committee will receive classified information on Directed Energy.

Agenda: Topics tentatively scheduled for classified discussion include, but are not limited to Directed Energy Overview, Missile Defense Agency Directed Energy Activities, Foreign Directed Energy Efforts, Diode Pumped Alkaline Laser, Missile Defense Advisory Committee Executive Session; and Missile Defense Advisory Committee outbrief to the Director, Missile Defense Agency.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 the Missile Defense Agency has determined that the meeting shall be closed to the public. The Director, Missile Defense Agency, in consultation with the Missile Defense Agency Office of General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. 552b(c)(1).

Committee's Designated Federal Officer: Mr. David Bagnati, *MDAC@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the membership of the Missile Defense Advisory Committee about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Missile Defense Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Missile Defense Advisory Committee, in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file formats: Adobe Acrobat PDF, MS Word or MS PowerPoint), and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer is as stated above and can also be obtained from the GSA's Federal Advisory Committee Act Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Missile Defense Advisory Committee until its next meeting. The Designated Federal Officer will review all timely submissions with the Missile Defense Advisory Committee Chairperson and ensure they are provided to all members of the Missile Defense Advisory Committee before the meeting that is the subject of this notice.

Due to internal DoD administrative delays, beyond the control of the Missile Defense Advisory Committee or its Designated Federal Officer, the Government was unable to process the **Federal Register** notice for the March 24, 2011 meeting of the Missile Defense Advisory Committee as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

FOR FURTHER INFORMATION CONTACT: Mr. David Bagnati, Designated Federal Officer at *MDAC@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

Dated: March 22, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–7054 Filed 3–24–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 33 U.S.C. 2251 and the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is renewing the charter for the Inland Waterways Users Board (hereafter referred to as the Board).

The Board is a non-discretionary federal advisory committee that shall provide the Secretary of Defense through the Secretary of the Army and the Assistant Secretary of the Army for Civil Works, independent advice and recommendations on matters relating to construction and rehabilitation priorities and spending levels on the commercial navigation features and components of the U.S. inland waterways and inland harbors as defined in Public Law 95–502 and amended by Public Law 99–662.

The Board shall annually file their recommendations with the Secretary of the Army and with the Congress.

The Secretary of the Army may act upon the Board's advice and recommendations.

Pursuant to 33 U.S.C. 2251(a), the Board shall be composed of eleven members appointed by the Secretary of Defense. The members shall be selected so as to represent various regions of the country and a spectrum of the primary users and shippers utilizing the inland and intra-coastal waterways for commercial purposes. Due considerations shall be given to assure a balance among the members based on the ton-mile shipment of the various categories of commodities shipped on inland waterways.

Board members appointed by the Secretary of Defense, who are not full-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and these individuals shall serve as Special Government Employees. Board members shall, with the exception of travel and per diem for official travel, serve without compensation.

Board members shall serve two-year terms, with their appointments renewed on an annual basis by the Secretary of Defense. No member, unless otherwise selected by the Secretary of the Army and approved by the Secretary of Defense, shall serve more than four consecutive years on the Board. Appointments vacated prior to the expiration of the term of appointment shall be filled only for the remainder of the term.

The Secretary of the Army shall select the Board's Chairperson and Vice-Chairperson from the total membership, and these individuals shall serve at the discretion of the Secretary of the Army. The Vice Chairperson will act as Chairperson in the absence or incapacity of the Chairperson, or in the event of a vacancy in the office of the Chairperson.

The Secretary of the Army shall designate, and the Secretaries of Agriculture, Transportation and Commerce may designate, representatives to act as non-voting observers of the Board. In addition, the Secretary of the Army through the Secretary of Defense may appoint consultants with special expertise to assist the Board on an ad hoc basis.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission and these subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate federal regulations.

Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Commission members, shall be appointed in the same manner as the Board members. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3019, and serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson. Pursuant to 33 U.S.C. 2251(B), the Board shall meet at least semi-annually.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings, however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Inland Waterways Users Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Inland Waterways Users Board.

All written statements shall be submitted to the Designated Federal Officer for the Inland Waterways Users Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Inland Waterways Users Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Inland Waterways Users Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

Dated: March 22, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–7050 Filed 3–24–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement for the Proposed South Coast Rail Project, Commonwealth of Massachusetts, Department of the Army Permit Application Number NAE–2007–00698

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the New England District, U.S. Army Corps of Engineers (Corps) has prepared a Draft Environmental Impact Statement (DEIS) to evaluate a proposed establishment of public transportation service between Boston and the Cities of New Bedford and Fall River, MA. The Massachusetts Department of Transportation (MassDOT; formerly the Executive Office of Transportation and Public Works or EOT) has submitted an application for a Department of the Army permit to discharge fill material into waters of the United States (U.S.), ranging in area from approximately 10.3 to approximately 21.5 acres (depending on the alternative selected), including wetlands, incidental to the establishment of transportation infrastructure. The Notice of Intent for preparation of the DEIS was published in the **Federal Register** (73 FR 64927, October 31, 2008).

DATES: The Corps will hold two public hearings to receive comments on the DEIS. The public hearings will be held on:

1. May 4, 2011, 7 P.M., Qualters Middle School, 240 East Street, Mansfield, MA.
2. May 5, 2011, 7 P.M., Keith Middle School, 225 Hathaway Blvd., New Bedford, MA.

Written comments on the DEIS must be received no later than: May 27, 2011.

Additional information on how to submit comments is included in the (**SUPPLEMENTARY INFORMATION**) section.

ADDRESSES: Comments can be sent to Mr. Alan Anacheka-Nasemann, Project Manager, U.S. Army Corps of Engineers, New England District, Regulatory Division, ATTN: CENAE–R–PEA, 696 Virginia Road, Concord, MA, by fax at 978–318–8303, or by e-mail to: *SCREIS@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Alan Anacheka-Nasemann, (978) 318–8214, e-mail: *SCREIS@usace.army.mil.*

SUPPLEMENTARY INFORMATION: MassDOT has submitted an application under Section 404 of the Clean Water Act (33 U.S.C. 1344) for a Department of the Army permit to discharge fill material into waters of the U.S. incidental to establishment of commuter public transportation service between Boston and New Bedford and Fall River, MA, and known as "South Coast Rail." The overall project purpose is to more fully meet the existing and future demand for public transportation between Fall River/New Bedford and Boston, MA and to enhance regional mobility. The project envisions up to approximately 9600 passenger daily trips between Boston and New Bedford/Fall River.

Elements of all of the alternatives proposed by MassDOT would be located in waters of the United States. The proposed alternative routes could affect high quality natural resources, including Commonwealth of Massachusetts Wildlife Management Areas and Areas of Critical Environmental Concern. In addition, all of the proposed alternative routes would affect historic and cultural resources, including properties eligible for listing on the National Register of Historic Places, National Historic Landmarks and historic districts that have cultural importance in the affected communities. Consultation on the extent of the impacts on these resources is ongoing with State and Tribal Historic Preservation Offices pursuant to Section 106 of the National Historic Preservation Act.

The DEIS is intended to provide the information needed for the Corps to perform a public interest review for the Section 404 permit decision. Significant issues analyzed in the DEIS included impacts to waters of the U.S. (including vernal pools and other wetlands), transportation, land use, socioeconomics, environmental justice, visual effects, noise, vibration, cultural resources, air quality, open space, farmland, hazardous materials, biodiversity, threatened and endangered species, and water resources. Several alternatives were evaluated for comparative purposes, including the No Action Alternative under which no new transportation infrastructure would be built.

The "Attleboro Alternative" would add new rail service via the existing AMTRAK Northeast Corridor, with added capacity, new track and existing freight lines, from Boston via Attleboro and Norton to Taunton. The new track ("Attleboro bypass") would be laid near Chartley Pond in the vicinity of an existing National Grid electrical line right-of-way.

The "Stoughton Alternative" would extend the existing Stoughton commuter rail line from its current terminus in Stoughton along presently abandoned railroad rights-of-way through Easton and Raynham to Taunton. This would follow an existing, abandoned railroad grade that crosses Hockomock Swamp and Pine Swamp to the east side of Taunton.

The "Whittenton Alternative" is a variant of the Stoughton Alternative, and would extend the existing Stoughton commuter rail line from its current terminus in Stoughton along presently abandoned railroad rights-of-way through Easton and Raynham to Taunton. This would follow the existing, abandoned railroad grade that crosses Hockomock Swamp and then an abandoned, serpentine (winding) railroad grade to the west side of Taunton.

Continuation of all three rail alternatives from Taunton would follow existing, active freight lines through Lakeville and Freetown to New Bedford and Fall River. These links between Taunton and New Bedford/Fall River are common to all three rail alternatives identified above. In addition, all three routes would entail the addition of new train stations and major reconstruction of existing stations.

The "Rapid Bus" Alternative would provide commuter bus service, in lieu of rail, from New Bedford, Fall River and Taunton to South Station via I–93, Route 24, and Route 140. Buses would use a combination of new zipper bus lanes, new reversible bus lanes, two-way bus lanes, and general purpose lanes in mixed traffic. New bus stations would serve New Bedford, Fall River, Freetown, and Taunton.

The No-Build Alternative would provide enhancements to existing bus services with limited improvements to the existing transit and roadway system, but otherwise no major infrastructure improvements.

Other Environmental Review and Consultation Requirements. To the fullest extent possible, the DEIS integrated analyses and consultation required by the Endangered Species Act of 1973, as amended (Pub. L. 93–205; 16 U.S.C. 1531, *et seq.*); the National Historic Preservation Act of 1966, as amended (Pub. L. 89–855; 16 U.S.C. 470, *et seq.*); the Fish and Wildlife Coordination Act of 1958, as amended (Pub. L. 85–624; 16 U.S.C. 661, *et seq.*); the Coastal Zone Management Act of 1972, as amended (Pub. L. 92–583; 16 U.S.C. 1451, *et seq.*); the Clean Water Act of 1977, as amended (Pub. L. 92–500; 33 U.S.C. 1251, *et seq.;* 33 U.S.C. 1344(b)); Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403 *et seq.*); and applicable and appropriate Executive Orders. Additionally, the DEIS was prepared as a Draft Environmental Impact Report (DEIR) to satisfy the requirements of the Massachusetts Environmental Policy Act (MEPA; 301 CMR 11.00 *et seq.*). The MEPA review is being conducted simultaneously with the NEPA process.

Public Participation. Public comment on the proposal, and any or all of the alternative routes and modes is requested and encouraged. Any person

wishing to comment on the DEIS can submit written comments to: Alan Anacheka-Nasemann, Project Manager, Regulatory Division, U.S. Army Corps of Engineers, New England District, 696 Virginia Road, Concord, Massachusetts 01742–2751, Reference File No. NAE–2007–00698, by fax at 978–318–8303, or by e-mail to *SCREIS@usace.army.mil.* The initial determinations made herein will be reviewed in light of comments submitted in response to this notice. All comments will be considered a matter of public record. Copies of comments will be forwarded to the applicant.

Interested parties may view the DEIS online at: *http://www.nae.usace.army.mil/projects/ma/SouthCoastRail/southcoastrail.htm.* The DEIS is also available to review at the following locations:

1. State Transportation Library of Massachusetts 10 Park Plaza, 2nd Floor, Boston, MA.
2. Russell Memorial Library, 88 Main Street, Acushnet, MA.
3. Attleboro Public Library, 74 North Main Street, Attleboro, MA.
4. Berkley Public Library. 3 North Main Street, Berkley, MA.
5. Boston Public Library, Central Library, 700 Boylston Street, Boston, MA.
6. Thayer Public Library, 798 Washington Street, Braintree, MA.
7. Canton Public Library, 786 Washington Street, Canton, MA.
8. Dedham Public Library, 43 Church St., Dedham, MA.
9. Ames Free Library, 15 Barrows Street, North Easton, MA.
10. Fall River Public Library, 104 North Main Street, Fall River, MA.
11. Boyden Library, 10 Bird Street, Foxborough, MA.
12. James White Memorial Library, 5 Washburn Rd., East Freetown, MA.
13. Lakeville Public Library, 4 Precinct Street, Lakeville, MA.
14. Mansfield Public Library, 255 Hope Street, Mansfield, MA.
15. Milton Public Library, 476 Canton Avenue, Milton, MA.
16. New Bedford Free Public Library, 613 Pleasant Street, New Bedford, MA.
17. Norton Public Library, 68 East Main Street, Norton, MA.
18. Thomas Crane Public Library, 40 Washington St., Quincy, MA.
19. Turner Free Library, 2 North Main Street, Randolph, MA.
20. Raynham Public Library, 760 South Main Street, Raynham, MA.
21. Sharon Public Library, 11 North Main Street, Sharon, MA.
22. Stoughton Library, 84 Park Street, Stoughton, MA.
23. Taunton Public Library, 12 Pleasant Street, Taunton, MA.
24. West Bridgewater Public Library, 80 Howard Street, West Bridgewater, MA.

Dated: March 18, 2011.

Lieutenant Colonel Steven M. Howell,

Deputy District Commander, U.S. Army Corps of Engineers, New England.

[FR Doc. 2011–7070 Filed 3–24–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2011–0004]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Navy proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on April 25, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson (202) 685–6546, or by mail at HEAD, FOIA/Privacy Act Policy Branch, the Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the **FOR FURTHER INFORMATION CONTACT** address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: March 22, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM05100–5

SYSTEM NAME:

Enterprise Safety Applications Management System (ESAMS) (May 31, 2006, 71 FR 30888).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "CNIC Transitional Hosting Center, 1968 Gilbert St., Norfolk, VA 23511–3318 and organizational elements of the Department of the Navy; official mailing addresses are published in the Standard Navy Distribution List."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Official: Commander, Navy Installations Command, 2713 Mitscher Road, SW., Ste 300, Anacostia Annex, DC 20373–5802.

Record Holder: Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Commanding Officer of the local activity. Official mailing addresses are published in the Standard Navy Distribution List.

The request should contain individual's full name, Social Security Number (SSN), address and be signed.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access the

information about themselves contained in this system of records should address written inquiries to the Commanding Officer of the local activity. Official mailing addresses are published in the Standard Navy Distribution List.

The request should contain the individual's full name, Social Security Number (SSN), address and be signed.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records."

* * * * *

NM05100–5

SYSTEM NAME:

Enterprise Safety Applications Management System (ESAMS)

SYSTEM LOCATION:

CNIC Transitional Hosting Center, 1968 Gilbert St., Norfolk, VA 23511–3318 and organizational elements of the Department of the Navy; official mailing addresses are published in the Standard Navy Distribution List.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Navy (DON) military and civilian personnel, non-appropriated personnel, foreign national military and civilian personnel, other U.S. Government personnel, or contractors, who work or receive support from the U.S. Navy, ashore and/or afloat.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), date of birth, job title, rank/rate/grade, civilian/military/foreign nationals/contactors indicator, unit identification code (UIC), activity name, major command code, department, gender, training/certifications received, test scores, occupational medical stressors, date of last physical and non-diagnostic information concerning health readiness/restrictive duty, respirator usage and fit test results, chemical and/or environmental exposures, and occupational injuries/illnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 41 4101–4118, the Government Employees Training Act of 1958; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5042, Commandant of the Marine Corps; E.O. 12196, Occupational Safety and Health Programs for Federal Employees; DoD Instruction 6055.7, Accident Investigation, Reporting, and Record Keeping; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To ensure all individuals receive required safety, fire, security, force protection, and emergency management training courses necessary to perform assigned duties and comply with Federal, DoD, and Navy related regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b) (3) as follows:

To the Occupational Safety and Health Administration (OSHA) during the course of an on-site inspection.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media and paper records.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number (SSN).

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorize persons that are properly screened, cleared and trained. Information is password protected. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Paper records are retained at the local command for a minimum of five years. Computerized database is retained for the duration of employment plus 30 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Installations Command, 2713 Mitscher Road, SW., Ste 300, Anacostia Annex, DC 20373–5802.

Record Holder: Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Commanding Officer of the local activity. Official mailing addresses are published in the Standard Navy Distribution List.

The request should contain individual's full name, Social Security Number (SSN), address and be signed.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

RECORD ACCESS PROCEDURES:

Individuals seeking to access the information about themselves contained in this system of records should address written inquiries to the Commanding Officer of the local activity. Official mailing addresses are published in the Standard Navy Distribution List.

The request should contain the individual's full name, Social Security Number (SSN), address and be signed.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; personnel files; non-diagnostic extracts from medical records that address medical readiness/restrictions; and office files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–7053 Filed 3–24–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before April 25, 2011.

ADDRESSES: Written comments should be addressed to the Office of

Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* 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 the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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.

Dated: March 22, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: Survey of Customers, Evaluation of the Regional Educational Laboratories.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 11,760.

Total Estimated Annual Burden Hours: 1,960.

Abstract: As one component of the evaluation of the Regional Educational Laboratories (RELs) mandated by the Education Sciences Reform Act of 2002 (Title I, Part D, Section 174), the National Center for Education Evaluation and Regional Assistance plans to survey potential and actual REL customers to answer the following questions: (1) How aware are State and local educational agency officials of the products and activities of the RELs? (2) How relevant are the REL technical assistance products and activities to the needs of the states, localities, and policymakers in their regions? (3) How useful have the REL technical assistance products and activities been to the states, localities, and policymakers in the regions? The data gathered from this web-based survey of state and local educational agency officials will inform the decisions of program administrators, policymakers, and the public.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4452. 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 the Internet address *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. 2011–7105 Filed 3–24–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Erma Byrd Scholarship Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Erma Byrd Scholarship Program

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116E.

DATES: *Applications Available:* March 25, 2011.

Deadline for Transmittal of Applications: April 25, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Erma Byrd Scholarship Program provides scholarships to individuals pursuing a course of study that will lead to a career in industrial health and safety occupations, including mine safety. This program is designed to increase the skilled workforce in these fields at both the fundamental skills level and the advanced skills level. The program has a service obligation component, which requires recipients of the scholarship to begin employment in a career position related to industrial health and safety no later than six months after completion of the degree program, and to continue to work in a career position related to industrial health and safety, including mine safety, for a period of one year.

The scholarships are available to students in the following eligible areas of study related to industrial health and safety: Mining and mineral engineering, industrial engineering, occupational safety and health technology/technician, quality control technology/technician, industrial safety technology/technician, hazardous materials information systems technology/technician, mining technology/technician, and occupational health and industrial hygiene.

Program Authority: For FY 2011, the authority for the Erma Byrd Scholarship Program is established under division D, title III of the Consolidated Appropriations Act, 2010, Public Law 111–117. FY 2010 funds are being used in FY 2011 to make new awards.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts, 75, 77, 81, 82, 84, 85, 86, and 99.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds for New Awards: $205,767.

Estimated Average Size of Awards: $2,500 (associate's degree student); $5,000 (bachelor's degree student); $10,000 (graduate degree student).

Estimated Number of Awards: 41. The number of scholarships awarded will be allocated between undergraduate students and graduate students in the same proportion as the number of fundable applications received from those groups of students, taking into account the size of the awards to be made to students in those groups.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information and Program Requirements

1. *Eligible Applicants:* Individuals who, at the time of application, are: (1) Enrolled or planning to enroll in an associate's, bachelor's, or graduate degree program at an accredited U.S. institution of higher education; (2) within two years of completing a degree in an eligible field of study under the Erma Byrd Scholarship Program; (3) a citizen, national, or permanent resident of the United States; and (4) eligible to receive Federal grants, loans, or work assistance pursuant to section 484 of the Higher Education Act of 1965, as amended (HEA).

2. *Program Requirements:*

(a) *Satisfactory Academic Progress.* Scholarship recipients must maintain satisfactory academic progress in accordance with 34 CFR 668.34 throughout the period of funding; additionally, they must submit a Student Activities Report to the Secretary at the end of each year of funding, with a certification from an authorized representative of the institution that the student is maintaining satisfactory academic progress. If an Erma Byrd Scholarship recipient does not maintain satisfactory academic progress throughout the period of funding or does not submit a Student Activities Report to the Secretary at the end of each year of funding, the recipient is not eligible for any additional funding and must repay the scholarship amount as a Direct Unsubsidized Student Loan with all the associated repayment conditions, including interest charges and fees as provided under title IV, part D of the HEA.

(b) *Service Obligation.* Scholarship recipients must be employed in a career position related to industrial health and safety, including mine safety, for a period of one year following the completion of their degree program. Scholarship recipients must begin such employment no more than six months after the completion of their degree program. A scholarship recipient must submit a verification of employment report to the Secretary no more than six months immediately after completion of his or her degree program, reporting on post-graduation activities, including changes in their permanent address, e-mail, phone number, and employment status. Additionally, scholarship recipients must submit a final employment report to the Secretary at the end of the one-year service obligation period.

If an Erma Byrd Scholarship recipient does not fulfill the complete service obligation within eighteen months after completion of his or her degree program, the recipient must repay the scholarship amount as a Direct Unsubsidized Student Loan with all the associated repayment conditions, including interest charges and fees as provided under title IV, part D of the HEA.

3. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

4. *Applicability of Rulemaking Requirements.* Under the Administrative Procedure Act (APA) (5 U.S.C. 553) and section 437 of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1), the Department generally offers interested parties the opportunity to comment on proposed eligibility and other program requirements. Division D, title III, of the Consolidated Appropriations Act, 2010, Public Law 111–117 provides, however, that the provisions of section 553 of the APA and section 437 of GEPA do not apply to this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Department. To obtain a copy via the Internet, use the following address for the Erma Byrd Scholarship Program Web site: *http://www.ed.gov/programs/ermabyrd/index.html.*

To obtain a copy from the Department, write, fax, or call the following: Lorece Stanton, Erma Byrd Scholarship Program, U.S. Department of Education, Student Service, 1990 K Street, NW., Room 7099, Washington, DC 20006–8524. *Telephone:* (202) 219–7077. *Fax:* (202) 502–7857 or by *email: ermabyrdprogram@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g. braille, large print, audiotape, or computer diskette) by contacting the person listed in this section.

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 program.

3. *Submission Dates and Times:*

Applications Available: March 25, 2011.

Deadline for Transmittal of Applications: April 25, 2011.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* All applications must be submitted electronically by e-mailing the application in the form of a Microsoft Word (.DOC or .DOCX) document to *ermabyrdprogram@ed.gov.* Please note that an electronic application in a format other than Microsoft Word will not be accepted.

If you are unable to submit your application by e-mail and wish to submit your application by mail, you must submit a request for permission to submit it by mail, no less than 10 days prior to the application deadline date, to Lorece Stanton by e-mail to *ermabyrdprogram@ed.gov* or by postal mail to U.S. Department of Education, Student Service, 1990 K Street, NW., Room 7099, Washington, DC 20006–8524. In your request, you must include the reason why you are unable to submit the application electronically.

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.

V. Application Review Information

1. *Selection Criteria:*

All applicants are required to complete and submit the Erma Byrd Scholarship Program Applicant Information Form, which will be used to determine the applicant's eligibility for the scholarship.

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.

Additional factors we consider in selecting an application for an award are as follows:

(a) *Undergraduate Applicants.* In selecting undergraduate students to receive a scholarship, the Secretary will award scholarships to students in the order that the applications are received. Priority will be given first to students who have demonstrated financial need and are eligible to receive a Federal Pell Grant.

Qualified undergraduate applicants who wish to have their Federal Pell Grant eligibility considered as part of their application must demonstrate financial need by submitting a Free Application for Federal Student Aid (FAFSA), which may be obtained at *http://www.fafsa.ed.gov* or from their institution's financial aid office, and by submitting their Social Security Number via postal mail using the Pell Grant Eligibility Certification Sheet contained in the Erma Byrd Scholarship Program application package. Applicants who have already submitted their FAFSA for the 2010–2011 award year do not need to resubmit the FAFSA.

The Secretary will award scholarships to applicants who are eligible for Federal Pell Grants and who are enrolled in eligible fields of study in the order that the applications are received.

If additional funds are available after awards are made to undergraduate students who are eligible for a Federal Pell Grant, the Secretary will award scholarships to qualified undergraduate students who are not eligible for a Federal Pell Grant in the order that their applications are received.

(b) *Graduate Applicants.* In selecting graduate students to receive a scholarship, the Secretary will award scholarships to qualified students in the order that the applications are received.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify you and send a Grant Award Notification (GAN) directly to the institution you will be attending. The institution will disburse funds to scholarship recipients in accordance with its regular payment schedule.

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:* Scholarship recipients must submit a Student Activities Report to the Secretary at the end of each year of funding, which includes certification from an authorized representative of the institution that the student is maintaining satisfactory academic progress. In addition, a scholarship recipient must submit a verification of employment report to the Secretary no more than six months immediately after completion of his or her degree program, reporting on post-graduation activities, including changes in their permanent address, e-mail, phone number, and employment status. Finally, scholarship recipients must submit a final employment report to the Secretary at the end of the service obligation period.

The student must provide written certification from an authorized representative of the institution that the student is maintaining satisfactory academic progress.

4. *Performance Measures:* The effectiveness of the Erma Byrd Scholarship Program will be measured by graduation completion rates, time-to-degree completion rates, and the percentage of students fulfilling the one-year service obligation within eighteen months of graduation. The Department will use the verification of employment and final employment reports to assess the program's success in assisting scholarship recipients in completing their course of study and receiving their degree, and entering the specified fields.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lorece Stanton, Erma Byrd Scholarship Program, U.S. Department of Education, Student Service, 1990 K Street, NW., Room 7099, Washington, DC 20006–8524. *Telephone:* (202) 219–7077. *Fax:* (202) 502–7857 or by *e-mail: ermabyrdprogram@ed.gov.*

If you use a TDD, call the FRS, 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) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Dated: March 22, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–7126 Filed 3–24–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Program for North American Mobility in Higher Education

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

International and Foreign Language Education Service (IFLE): Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: Program for North American Mobility in Higher Education

Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116N.

DATES: *Applications Available:* March 25, 2011.

Deadline for Transmittal of Applications: May 17, 2011.

Deadline for Intergovernmental Review: July 16, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To provide grants for or to enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Priorities: This competition includes one absolute priority and three invitational priorities.

Absolute Priority: This priority is from the notice of final priorities for this program, published in the **Federal Register** on December 11, 2009 (74 FR 65764). For FY 2011, this priority is an

absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

This priority supports the formation of educational consortia of United States (U.S.), Canadian, and Mexican institutions. To meet this priority, the applicant must propose a project that supports cooperation in the coordination of curricula; the exchange of students, if pertinent to grant activities; and the opening of educational opportunities among the U.S., Canada, and Mexico. In order to be eligible for an award under this priority, the applicant in the U.S. must be a U.S. institution, the applicant in Mexico must be a Mexican institution, and the applicant in Canada must be a Canadian institution.

Canadian and Mexican institutions participating in any consortium proposal under this priority may apply, respectively, to Human Resources and Social Development Canada (HRSDC) or the Mexican Secretariat for Public Education (SEP), for additional funding under separate but parallel Canadian and Mexican competitions. Within this absolute priority, we are particularly interested in applications that address the following invitational priorities.

Invitational Priorities: For FY 2011, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1

This priority invites projects that include a plan to work with an institution of higher education in another country in Latin America (in addition to Mexico) to create a partnership that would focus on key elements of international student exchange programs such as: Developing cooperative bilateral arrangements, crafting inter-institutional bilateral Memorandums of Understanding, student recruitment and selection strategies, student language and preparation requirements, tuition reciprocity agreements, student fees, curriculum development, student credit transfer and/or recognition, and financial sustainability.

Invitational Priority 2

In order to increase the participation of underrepresented students in international education and foreign language learning, the Secretary encourages applications from consortia that include community colleges or minority-serving institutions eligible for assistance under part A or B of title III or under title V of the HEA. (Please refer to section III. 1. Eligible Applicants for additional information on applications from consortia.)

Invitational Priority 3

This priority invites applications from consortia in which the lead applicant institution has not served as a lead or partner grantee institution in a consortia funded under this program since FY 2006. (Please refer to section III.1. Eligible Applicants for additional information on applications from consortia and lead and partner applicant/grantee institutions.)

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities for this program, published in the **Federal Register** on December 11, 2009 (74 FR 65764).

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 $64,036,000 for the FIPSE program for FY 2011, of which we intend to use an estimated $300,000 for 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: $30,000–$50,000 for the first year and $90,000–$180,000 for the duration of the grant.

Estimated Average Size of Awards: The average award for a three-year grant is $90,000. The average award for a four-year grant is $180,000.

Estimated Number of Awards: 9–10.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs), other public and private nonprofit institutions and agencies, and combinations of these institutions and agencies. The application must designate a lead U.S. applicant and the lead Mexican and Canadian applicants and must clearly specify its partner applicants in the U.S., Mexico, and Canada.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* 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 program or competition as follows: CFDA number 84.116N.

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 listed under *Accessible Format* in section VII 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 program. Word Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to 5000 words (counting every word including "a", "the", *etc*). We suggest using the following standards in formatting the application narrative:

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- 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 5000-word limit does not apply to the cover sheet; the budget section, including the budget narrative; the assurances and certifications; the one-page abstract; the resumes; the bibliography; or the letters of support.

We will reject your application if you exceed the word limit.

3. *Submission Dates and Times:*

Applications Available: March 25, 2011.

Deadline for Transmittal of Applications: May 17, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, 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: July 16, 2011.

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 program.

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 program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Program for North American Mobility in Higher Education, CFDA number 84.116N, must be submitted electronically using 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.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for North American Mobility in Higher Education 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 84.116, not 84.116N).

Please note the following:

- 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 program 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 qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• 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.

• You must upload any narrative sections and all other attachments to 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 word-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 4:30:00 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 4:30:00 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 4:30:00 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.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Amy Wilson, U.S. Department of Education, 1990 K Street, NW., Room 6082, Washington, DC 20006–8544. FAX: (202) 502–7859.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. 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 84.116N), 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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You 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 84.116N), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 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

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. *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 following two performance measures will be used by the Department in assessing the success of the Program for North American Mobility in Higher Education:

(1) The extent to which funded projects are being replicated (*i.e.,* adopted or adapted by others).

(2) The manner in which projects are being institutionalized and continued after funding.

If funded, you will be asked to collect and report data from your project on steps taken toward achieving the outcomes evaluated by these performance measures (*i.e.,* institutionalization and replication). Consequently, applicants are advised to include these two outcomes in conceptualizing the design, implementation, and evaluation of their proposed projects. Institutionalization and replication are important outcomes that ensure the ultimate success of international consortia funded through this program.

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: Amy Wilson, International and Foreign Language Education Programs, U.S. Department of Education, Program for North American Mobility in Higher Education, 1990 K Street, NW., Room 6082, Washington, DC 20006–8544. Telephone: (202) 502–7689.

If you use a TDD, call the FRS, 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) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Dated: March 22, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–7128 Filed 3–24–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Hispanic-Serving Institutions STEM and Articulation Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Hispanic-Serving Institutions STEM and Articulation Programs

Notice inviting applications for new awards using fiscal year (FY) 2010 funds.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031C.

DATES: *Applications Available:* March 25, 2011.

Deadline for Transmittal of Applications: April 29, 2011.

Deadline for Intergovernmental Review: June 28, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Programs: The Hispanic-Serving Institutions STEM and Articulation programs authorized under section 371 of the Higher Education Act of 1965, as amended (HEA) provide grants to assist Hispanic-Serving institutions (HSIs) to develop and carry out activities to improve and expand their capacity to serve Hispanic and other low-income students.

Note 1: The Hispanic-Serving Institutions STEM and Articulation programs in this notice are authorized under section 371 of part F of title III of the HEA. This section appropriates $100,000,000 annually for Hispanic-serving institutions (HSI), as defined in section 502 of the HEA, for activities described in section 503 of part A of title V of the HEA, with a priority given to applications that propose to increase the number of Hispanic and other low income students attaining degrees in the fields of science, technology, engineering, or mathematics and to develop model transfer and articulation agreements between 2-year Hispanic-serving institutions and 4-year institutions in such fields.

Although the Hispanic-Serving Institutions STEM and Articulation programs authorized under section 371 of the HEA are not part of the Developing HSIs program authorized by title V of the HEA, the eligibility and activity provisions under the Developing HSIs program apply to the Hispanic-Serving Institutions STEM and Articulation programs pursuant to section 371(a)(2) and (b)(2)(B) of the HEA. In light of the overlap of the statutory provisions in these two programs, the Secretary has determined that it is appropriate to use certain requirements contained in the Developing HSIs program regulations (*see* 34 CFR part 606) for use for the first grant competition for the Hispanic-Serving Institutions STEM and Articulation programs competition. Specifically, the Secretary has decided to base the requirements for this competition on the following Developing HSIs regulations: Enrollment of needy students provisions in 34 CFR 606.3 and the low education and general expenditures provisions in 34 CFR 606.4 as part of the eligibility criteria; unallowable activities in 34 CFR 606.10(c); and the tie-breaker provisions in 34 CFR 606.23(b).

Note 2: The eligibility criteria for this competition, including the enrollment of needy students and expenditure provisions, are set forth in section III. 1. *Eligible Applicants* of this notice. The unallowable activities provisions are set forth in section IV. 5. *Funding Restrictions* of this notice, and the tie-breaker provisions are set forth in section V. 2. *Tie-breaker for Development Grants of this notice.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed program requirements. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (Reconciliation Act) provided new authority to implement the Hispanic-Serving Institutions STEM and Articulation programs authorized under section 371 of the HEA. This is the first grant competition for the programs since the enactment of the Reconciliation Act; therefore, this competition qualifies for the exemption.

Under section 437(d)(1) of GEPA, in order to ensure timely grant awards, the Secretary has decided to forego public comment on the following requirements for this competition: the enrollment of needy students provision based on 34 CFR 606.3 and the low education and general expenditures provision based on 34 CFR 607.4 as part of the eligibility criteria, the unallowable activities provisions based on 34 CFR 606.10(c), and the tie-breaker provisions based on 34 CFR 606.23(b).

Priorities: This notice contains two absolute priorities and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(iv), the two absolute priorities are from section 371(b)(2)(B) of the HEA, 20 U.S.C. 1067q(b)(2)(B). The competitive preference priority is selected from the final supplemental priorities and definitions for discretionary grant programs notice published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Absolute 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 absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Absolute Priority 1

To meet this priority, an applicant must submit in accordance with section 371(b)(2)(B)(i) of the HEA, an application for an Individual Development or Cooperative Arrangement Development Grant that proposes to increase the number of Hispanic and other low income students attaining degrees in the fields of science, technology, engineering, or mathematics.

Absolute Priority 2

To meet this priority, an applicant must submit, in accordance with section 371(b)(2)(B)(ii) of the HEA, an application for an Individual Development or Cooperative Arrangement Development Grant that proposes to develop model transfer and articulation agreements between two-year HSIs and four-year institutions in such fields. *Competitive Preference Priority:* For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets this priority.

This priority is:

Enabling More Data-Based Decision-Making. Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements, in the following priority area:

Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success.

Note: For purposes of this competitive preference priority, the term *privacy requirements* means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State and local requirements regarding privacy.

Program Authority: 20 U.S.C. 1067q(b)(2)(B); Section 2103 of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

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 only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $99,900,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Note: Funds appropriated for this program for FY 2010 remain available for obligation in FY 2011 pursuant to 20 U.S.C. 1067q(b)(1)(B).

Estimated Range of Awards: $700,000–1,200,000.

Estimate Average Size of Awards: Individual Development Grant: $775,000. Cooperative Arrangement Development Grant: $1,100,000.

Maximum Awards: Individual Development Grant: $870,000. Cooperative Arrangement Development Grant: $1,200,000. We will reject any application that proposes a budget exceeding these maximum amounts for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: Individual Development Grants: 46. Cooperative Arrangement Development Grants: 58.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs that qualify as eligible HSIs are eligible to apply for new Individual Development Grants and Cooperative Arrangement Development Grants under the Hispanic-Serving Institutions STEM and Articulation Programs. To be an eligible HSI, an IHE must—

(a) Have an enrollment of needy students, as defined in section 502(b) of the HEA (section 502(a)(2)(A)(i) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(i));

(b) Have, except as provided in section 522(b) of the HEA, average educational and general expenditures that are low, per full-time equivalent (FTE) undergraduate student, in comparison with the average educational and general expenditures per FTE undergraduate student of institutions that offer similar instruction (section 502(a)(2)(A)(ii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(ii));

Note: To demonstrate an enrollment of needy students and low average educational and general expenditures per FTE undergraduate student, an IHE must be designated as an "eligible institution" in accordance with 34 CFR 606.3 through 606.5 and the notice inviting applications for designation as an eligible institution for the fiscal year for which the grant competition is being conducted.

(c) Be accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered, or making reasonable progress toward accreditation, according to such an agency or association (section 502(a)(2)(A)(iv) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iv));

(d) Be legally authorized to provide, and provide within the State, an educational program for which the institution awards a bachelor's degree (section 502(a)(2)(A)(iii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iii)); and

(e) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application (section 502(a)(5)(B) of the HEA; 20 U.S.C. 1101a(a)(5)(B)).

Note 1: Funds for the Hispanic-Serving Institutions STEM and Articulation Programs will be awarded each fiscal year; thus, for this program, the "end of the award year immediately preceding the date of application" refers to the end of the fiscal year prior to the application due date. The end of the fiscal year occurs on September 30 for any given year.

Note 2: In considering applications for grants under this program, the Department will compare the data and documentation the institution relied on in its application with data reported to the Department's Integrated Postsecondary Education Data System (IPEDS), the IHE's State-reported enrollment data, and the institutional annual report. If different percentages or data are reported in these various sources, the institution must, as part of the 25 percent assurance verification, explain the reason for the differences. If the IPEDS data show that less than 25 percent of the institution's undergraduate FTE students are Hispanic, the burden is on the institution to show that the IPEDS data are inaccurate. If the IPEDS data indicate that the institution has an undergraduate FTE less than 25 percent, and the institution fails to demonstrate that the IPEDS data are inaccurate, the institution will be considered ineligible.[1]

2. *Cost Sharing or Matching:* There are no cost sharing or matching requirements unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds. (20 U.S.C. 1101b(c)(2)).

IV. Application and Submission Information

1. *Address To Request Application Package:* Carolyn Proctor, U.S. Department of Education, 1990 K Street, NW., Room 6060, Washington, DC 20006–8513. *Telephone:* (202) 502–7567 or by *e-mail: Carolyn.Proctor@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

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 these programs.

Page Limits: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We have established mandatory page limits for both the Individual Development Grant and the Cooperative Arrangement Development Grant applications. You must limit the application narrative (Part III) to no more than 50 pages for the Individual Development Grant application and no more than 70 pages for the Cooperative Arrangement Development Grant application, 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

[1] For purposes of making the determination described in paragraph (e) of the Eligibility Criteria for this competition, IHEs must report their undergraduate Hispanic FTE percent based on the student enrollment count closest to, but not after, September 30, 2009.

In addition, for purposes of establishing eligibility for this competition, the Notice Inviting Applications for Designation as Eligible Institutions for FY 2010 was published in the **Federal Register** on December 7, 2009 (74 FR 64059), and the deadline for application was January 6, 2010. The Notice Inviting Applications for Designation as Eligible Institutions for FY 2010 was reopened on August 13, 2010 (75 FR 49484), and the deadline for applications was September 13, 2010. Only institutions that submitted the required application and received designation through one of these processes are eligible to submit applications for this competition.

application narrative, except titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs. These items may be single spaced. Charts, tables, figures, and graphs in the application narrative count toward the page limit.

- 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 and Arial Narrow) will not be accepted.
- If you do not use all of the allowable space on a page, it will be counted as a full page in determining compliance with the page limit.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424); the Department of Education Supplemental Information form (SF 424); Part II, Budget Information—Non-Construction Programs (ED 524); Part IV, the assurances and certifications; or the one-page abstract, or the program activity budget detail form and supporting narrative. However, the page limit does apply to all of the application narrative section (Part III), including the narrative on budget that responds to the selection criteria. If you include any attachments or appendices not specifically requested in the application package, these items will be counted as part of your application narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

Note: The narrative response to the budget selection criteria is not the same as the activity detail budget form and supporting narrative. The supporting narrative for the detail budget form explains the requested budget items line by line.

We will reject your application if you exceed the applicable page limit.

3. *Submission Dates and Times:*

Applications Available: March 25, 2011.

Deadline for Transmittal of Applications: April 29, 2011.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, 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: June 28, 2011.

4. *Intergovernmental Review:* These programs are 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 these programs.

5. *Funding Restrictions:* A grantee may not carry out the following activities or pay the following costs under a HSI STEM and Articulation Programs Development Grant:

(1) Activities that are not included in the grantee's approved application.

(2) Activities that are inconsistent with any State plan for higher education that is applicable to the institution, including, but not limited to, a State plan for desegregation of higher education.

(3) Activities or services that relate to sectarian instruction or religious worship.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation or to prepare them to teach theological subjects.

(5) Developing or improving non-degree or non-credit courses other than basic skills development courses.

(6) Developing or improving community-based or community services programs, unless the program provides academic-related experiences or academic credit toward a degree for degree students, or, unless it is a program or services to encourage elementary and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

(7) Purchase of standard office equipment, such as furniture, file cabinets, bookcases, typewriters, or word processors.

(8) Payment of any portion of the salary of a president, vice president, or equivalent officer who has college-wide administrative authority and responsibility at an institution to fill a position under the grant such as project coordinator or activity director.

(9) Costs of organized fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.

(10) Costs of student recruitment such as advertisements, literature, and college fairs.

(11) Services to high school students, unless they are services to encourage such students to develop the skills and the interest to pursue postsecondary education.

(12) Instruction in the institution's standard courses as indicated in the institution's catalog.

(13) Costs for health and fitness programs, transportation, and day care services.

(14) Student activities such as entertainment, cultural, or social enrichment programs, publications, social clubs, or associations.

(15) Activities that are operational in nature rather than developmental in nature.

We reference other 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 must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Hispanic-Serving Institutions STEM and Articulation Programs, CFDA number 84.031C, must be submitted electronically using 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.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Hispanic-Serving Institutions STEM and Articulation Programs at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.031 not 84.031C).

Please note the following:

- 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 qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- 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.
- You must upload any narrative sections and all other attachments to 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 4:30:00 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 4:30:00 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 4:30:00 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.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carolyn Proctor, U.S. Department of Education, 1990 K Street, NW., room 6048, Washington, DC 20006–8516. *FAX:* (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. 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 84.031C), 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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You 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 84.031C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 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 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 these programs are from 34 CFR 75.209(a) and 75.210, and are as follows:

Need for the project (20 points);

Quality of the project design (15 points);

Quality of project services (15 points);

Quality of project personnel (10 points);

Adequacy of resources (10 points);

Quality of the management plan (15 points); and

Quality of project evaluation (15 points).

Additional information regarding these criteria is listed in the application package for this competition.

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 achievement of project objectives, the applicant's use of funds, 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).

Additional factors we consider in selecting an application for an award are as follows:

(A) Documentation of at least 25 Percent Hispanic Undergraduate FTE Students. An applicant must provide, as an attachment to the application, the documentation the institution relied upon in determining that at least 25 percent of the institution's undergraduate FTE students are Hispanic.

Note: The 25 percent requirement applies only to *undergraduate* Hispanic students and is calculated based upon FTE students. Instructions for formatting and submitting the verification documentation to Grants.gov are in the application package for this competition.

(B) *Tie-breaker for development grants (based on* 34 CFR 606.23). To resolve ties in the reader scores of applications for development grants, the Department will award one additional point to an application from an IHE that has an endowment fund for which the market value per FTE student is less than the comparable average current

market value of the endowment funds per FTE student at similar type IHEs. In addition, to resolve ties in the reader scores of applications for HSI STEM and Articulation Programs development grants, the Department will award one additional point to an application from an IHE that has expenditures for library materials per FTE student that are less than the comparable average expenditures for library materials per FTE student at similar type IHEs.

We also will add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

1. Faculty development;
2. Funds and administrative management;
3. Development and improvement of academic programs;
4. Acquisition of equipment for use in strengthening management and academic programs;
5. Joint use of facilities; and
6. Student services.

For the purpose of these funding considerations, we will use the most recent complete data available (*e.g.,* for FY 2010, we will use 2008–2009 data).

If a tie remains after applying the tie-breaker mechanism above, priority will be given in the case of applicants for: (a) Individual development grants, to applicants that addressed the statutory priority found in section 521(d) of the HEA; and b. Cooperative arrangement grants, to applicants in accordance with section 524(b) of the HEA, if the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant institution.

If a tie still remains after applying the additional point(s) and the relevant statutory priority, we will determine the ranking of applicants based on the lowest endowment values per FTE enrolled student.

3. *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 in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in 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:* The Secretary has established the following key performance measures for assessing the effectiveness of the Hispanic-Serving Institutions STEM and Articulation Programs:

(1) The percentage change, over the five-year grant period, of the number of full-time degree-seeking undergraduates enrolled at HSIs.

(2) The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same institution.

(3) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year HSIs graduating within six years of enrollment.

(4) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year HSIs graduating within three years of enrollment.

(5) Federal cost for undergraduate and graduate degrees at institutions in the Hispanic-Serving Institutions STEM and Articulation Programs.

5. *Hispanic-Serving Institutions STEM and Articulation Programs Special Analyses:* The Hispanic- Serving Institutions STEM and Articulation Programs include two absolute priorities and one competitive preference priority listed under *Priorities* in section I of this notice.

To assess the impact of the adoption of these priorities on program outcomes, the Department will collect data through the annual performance report and conduct special analyses to determine the changes that occur during the course of the grant period in:

(1) The percentage of graduates receiving STEM related degrees from grantee institutions; and

(2) The number of students transferring from two-year grantee institutions to four-year institutions; and

(3) The use of student data on enrollment, persistence, and completion by grantee institutions that select the Competitive Preference Priority in conducting project activities. Such data may include data from State longitudinal data systems or other reliable third-party resources.

6. *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: Carolyn Proctor, U.S. Department of Education, 1990 K Street, NW., room 6048, Washington, DC 20006–8513. *Telephone:* (202) 502–7567 or by *e-mail: Carolyn.Proctor@ed.gov.*

If you use a TDD, call the FRS, 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) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

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 via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Dated: March 22, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–7127 Filed 3–24–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Charter Schools Program (CSP) Grants for Replication and Expansion of High-Quality Charter Schools

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of proposed priorities, requirements, definitions, and selection criteria.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282M.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement proposes priorities, requirements, definitions, and selection criteria under the CSP–Replication and Expansion of High-Quality Charter Schools grant competition. The Assistant Deputy Secretary may use these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2011 and later years. The Assistant Deputy Secretary intends to use these priorities, requirements, definitions, and selection criteria to award grants to eligible applicants to enable them to replicate or substantially expand high-quality charter schools with demonstrated records of success, including success in increasing student academic achievement.

DATES: We must receive your comments on or before April 25, 2011.

ADDRESSES: Address all comments about this notice to Erin Pfeltz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W255, Washington, DC 20202–5970.

If you prefer to send your comments by e-mail, use the following address: *erin.pfeltz@ed.gov.* You must include the phrase "CSP Grants for Replication and Expansion of High-Quality Charter Schools—Comments on FY 2011 Proposed Priorities" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Erin Pfeltz. (202) 205–3525 or by e-mail: *erin.pfeltz@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 4W255, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, initial implementation, or expansion of charter schools; and to evaluate the effects of charter schools, including their effects on students, student academic achievement, staff, and parents.

The purpose of the CSP–Replication and Expansion of High-Quality Charter Schools grant competition (CFDA 84.282M) is to award grants to eligible entities for the replication and expansion of successful charter school models.

Program Authority: 20 U.S.C. 7221–7221j; Consolidated Appropriations Act, 2010, Division D, Title III, Public Law 111–117.

Note: The Department anticipates that an authority similar to that in the Consolidated Appropriations Act, 2010, Division D, Title III, Public Law 111–117 will be included in the legislation that sets forth the Department's fiscal year 2011 appropriations.

Proposed Priorities

The Assistant Deputy Secretary for Innovation and Improvement proposes the following four priorities for this program. We may apply one or more of these priorities in any year in which this program is in effect.

Proposed Priority 1—Experience Operating or Managing High-Quality Charter Schools

Background

The Consolidated Appropriations Act, 2010, Division D, Title III, Public Law 111–117 called for the Department to make awards to eligible entities for the replication and expansion of "successful" charter school models in fiscal year (FY) 2010. For FY 2011, the Department anticipates that its appropriations statute will include similar language. Accordingly, because the focus of this program is specifically on the replication and expansion of "successful" charter school models, the Department believes that it is important that applicants have experience operating or managing multiple high-quality charter schools. Examples of successful applications under this program for FY 2010 can be found at *http://www.ed.gov/news/press-releases/education-secretary-arne-duncan-announces-twelve-grants-50-million-charter-schoo.* The abstracts describing these projects are available at *http://www2.ed.gov/programs/charter-rehqcs/index.html.*

Proposed Priority

This proposed priority is for projects that will provide for the replication or expansion of high-quality charter schools by applicants that currently operate or manage more than one high-quality charter school (as defined in this notice).

Proposed Priority 2—Low-Income Demographic

Background

Under the program statute, in determining the quality of applications from State educational agencies (SEAs) for CSP grants, the Secretary considers such factors as the contribution the charter school grant program will make to assisting educationally disadvantaged and other students to meet State academic content and State student academic achievement standards (20 U.S.C. 7221c(a)(1)). To help ensure that grantees under this program are well-prepared to serve educationally disadvantaged students, we propose a priority for applicants that have experience serving individuals from low-income families, which we believe is a close proxy for educationally disadvantaged students and is easily determined at the administrative level.

Proposed Priority

To meet this proposed priority, an applicant must demonstrate that at least 60 percent of all students in the charter schools it currently operates or manages are individuals from low-income families (as defined in this notice).

Proposed Priority 3—School Improvement

Background

One of the Department's top priorities is to help turn around the Nation's lowest-performing public schools. The Department's School Improvement Grants, authorized under section 1003(g) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (20 U.S.C. 6303(g)), provide support for charter schools as an important partner with local educational agencies (LEAs) in the school turnaround effort. We propose this priority to support this effort further.

Proposed Priority

To meet this proposed priority, an applicant must demonstrate that its proposed replication or expansion of one or more high-quality charter schools will occur in partnership with, and will be designed to assist, one or more LEAs in implementing academic or structural interventions to serve students attending schools that have been identified for improvement, corrective action, closure, or restructuring under section 1116 of the ESEA, and as described in the notice of final requirements for the School Improvement Grants, published in the **Federal Register** on October 28, 2010 (75 FR 66363).

Proposed Priority 4—Promoting Diversity

Background

In order to promote diversity in high-quality charter schools, the Secretary proposes a priority for applicants that propose projects designed to promote racial diversity, or avoid racial isolation, and serve students with disabilities and English learners at a rate equal to or higher than the rate at which these students are served in public schools in the surrounding area.

Proposed Priority

This proposed priority is for applicants that demonstrate a record of (in the schools they currently operate or manage), as well as an intent to continue (in schools that they will be creating or substantially expanding under this grant), taking active measures to—

(a) Promote diversity in their student bodies, including racial and ethnic diversity, or avoid racial isolation;

(b) Serve students with disabilities at a rate equal to or higher than the rate at which these students are served in public schools in the surrounding area; and

(c) Serve English learners at a rate equal to or higher than the rate at which these students are served in public schools in the surrounding area.

In support of this priority, applicants must provide enrollment data as well as descriptions of existing policies and activities undertaken or planned to be undertaken.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

Background

Because the purpose of this grant program is to replicate or expand high-quality charter schools, we propose to limit the use of funds to the replication or substantial expansion of an existing high-quality charter school that is based on the model or models for which the applicant has presented evidence of success.

Proposed Requirements

The Assistant Deputy Secretary for Innovation and Improvement proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

(a) *Eligibility:* To be eligible for an award, an eligible applicant must meet the statutory requirements. The requirement listed below is statutory; we are including it here for clarity. Eligible applicants for this program are non-profit charter management organizations (CMOs) and other not-for-profit entities.

Eligible applicants may also apply as a group or consortium.

(b) *Funding Restrictions:* Grantees under this program must use the grant funds to replicate or substantially expand the model or models for which the applicant has presented evidence of success, through the activities described in section 5204(f)(3) of the ESEA (20 U.S.C. 7221c(f)(3)).

Note: A grantee may use up to 20 percent of grant funds for initial operational costs associated with the expansion or improvement of the grantee's oversight or management of its charter schools provided that: (i) The specific charter schools being created or substantially expanded under the grant are the intended beneficiaries of such expansion or improvement, and (ii) such expansion or improvement is intended to improve the grantee's ability to manage or oversee the charter schools created or substantially expanded under the grant.

(c) *Reasonable and Necessary Costs.* The Secretary may elect to impose a maximum limit on the amount of grant funds that may be awarded per charter

school replicated, per charter school substantially expanded, or per new school seat created.

Note: Applicants must ensure that all costs included in the proposed budget are reasonable and necessary in light of the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

(d) *Other CSP Grants.* A charter school that receives funds under this competition is ineligible to receive funds for the same purpose under section 5202(c)(2) of the ESEA, including for planning and program design or the initial implementation of a charter school (*i.e.,* CFDA 84.282A or 84.282B).

A charter school that has received CSP funds for replication previously, or that has received funds for planning or initial implementation of a charter school (*i.e.,* CFDA 84.282A or 84.282B), may not use funds under this grant for the same purpose. However, such charter schools may be eligible to receive funds under this competition to substantially expand the charter school beyond the existing grade levels or student count.

Proposed Definitions

Background

Several terms associated with this program are not defined in section 5210 of the ESEA. Therefore, we are proposing the following definitions for these terms.

Proposed Definitions

The Assistant Deputy Secretary for Innovation and Improvement proposes the following definitions for these grants. We may apply one or more of these definitions in any year in which we award grants for the replication and expansion of high-quality charter schools.

Charter management organization (CMO) is a nonprofit organization that operates or manages multiple charter schools by centralizing or sharing certain functions and resources among schools.

Educationally disadvantaged students includes, but is not necessarily limited to, individuals from low-income families (as defined elsewhere in this notice), English learners, migratory children, children with disabilities, and neglected or delinquent children.

High-quality charter school is a school that—shows evidence of strong academic results for the past three years (or over the life of the school, if the school has been open for fewer than three years), based on the following factors:

(1) Increasing student academic achievement and attainment for all students, including, as applicable, educationally disadvantaged students served by the charter schools operated or managed by the applicant.

(2) Either (i) Demonstrated success in closing historic achievement gaps for the subgroups of students, described in section 1111(b)(2)(C)(v)(II) of the ESEA at the charter schools operated or managed by the applicant, or

(ii) No significant achievement gaps between any of the subgroups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA at the charter schools operated or managed by the applicant and significant gains in student academic achievement have been made with all populations of students served by the charter schools operated or managed by the applicant.

(3) Achieved results (including performance on statewide tests, annual student attendance and retention rates, high school graduation rates, college attendance rates, and college persistence rates (where applicable and available)) for low-income and other educationally disadvantaged students served by the charter schools operated or managed by the applicant that are above the average academic achievement results for such students in the State.

(4) Has no significant compliance issues (as defined in this notice), particularly in the areas of student safety and financial management.

Individual from a low-income family means an individual who is determined by an SEA or LEA to be a child, ages 5 through 17, from a low-income family, on the basis of (a) data used by the Secretary to determine allocations under section 1124 of the ESEA, (b) data on children eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (c) data on children in families receiving assistance under part A of title IV of the Social Security Act, (d) data on children eligible to receive medical assistance under the Medicaid program under Title XIX of the Social Security Act, or (e) an alternate method that combines or extrapolates from the data in items (a) through (d) of this definition (*see* 20 U.S.C. 6537(3)).

Replicate means to open one or more new charter schools that are based on the charter school model or models for which the applicant has presented evidence of success.

Significant compliance issue means a violation that did, will, or could lead to the revocation of a school's charter.

Substantially expand means to increase the student count of an existing charter school by more than 50 percent or to add at least two grades to an existing charter school over the course of the grant.

Proposed Application Requirements

Background

In order to provide reviewers with sufficient information to judge applications based on the selection criteria, we propose the following application requirements.

Proposed Application Requirements

Applicants applying for CSP Grants for Replication and Expansion of High-Quality Charter Schools funds must address both the following application requirements, which are based on the statutory requirements under the program, and the selection criteria described in this notice. We may apply one or more of these application requirements in any year in which this program is in effect. An applicant may choose to respond to these application requirements in the context of its responses to the selection criteria.

(a) Describe the objectives of the project for replicating or substantially expanding high-quality charter schools and the methods by which the applicant will determine its progress toward achieving those objectives.

(b) Describe how the applicant currently operates or manages the charter schools for which it has presented evidence of success, and how the proposed new or substantially expanded charter schools will be operated or managed. Include a description of central office functions, governance, daily operations, financial management, human resources management, and instructional management. If applying as a group or consortium, describe the roles and responsibilities of each member of the group or consortium and how each member will contribute to this project.

(c) Describe how the applicant will ensure that each proposed new or substantially expanded charter school receives its commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and any year in which the school's enrollment substantially expands significantly.

(d) Describe the educational program to be implemented in the proposed new or substantially expanded charter schools, including how the program will enable all students (including educationally disadvantaged students) to meet State student academic achievement standards, the grade levels or ages of students to be served, and the

curriculum and instructional practices to be used.

(e) Describe the administrative relationship between the charter school or schools to be replicated or substantially expanded by the applicant and the authorized public chartering agency.

(f) Describe how the applicant will provide for continued operation of the proposed new or substantially expanded charter school or schools once the Federal grant has expired.

(g) Describe how parents and other members of the community will be involved in the planning, program design, and implementation of the proposed new or substantially expanded charter school or schools.

(h) Include a request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the proposed new or substantially expanded charter schools.

(i) Describe how the grant funds will be used, including how these funds will be used in conjunction with other Federal programs administered by the Secretary, and with any matching funds.

(j) Describe how students in the community, including students with disabilities, English learners, and other educationally disadvantaged students, will be informed about the proposed new or substantially expanded charter schools and given an equal opportunity to attend such schools.

(k) Describe how the proposed new or substantially expanded charter schools that are considered to be LEAs under State law, or the LEAs in which the new or substantially expanded charter schools are located, will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act.

(l) Provide information on any significant compliance issues identified within the past three years for each school managed by the applicant, including compliance issues in the areas of student safety, financial management, and statutory or regulatory compliance.

(m) For each charter school currently operated or managed by the applicant, provide the following information: The year founded, the grades currently served, the number of students, the address, the percentage of students in each subgroup of students described in section 1111(b)(2)(C)(v)(II) of the ESEA, results on the State assessment for the past three years (if available) by subgroup, attendance rates, student attrition rates for the past three years, and (if the school operates a 12th grade) high school graduation rates and college attendance rates.

(n) Provide objective data showing applicant quality. In particular, the Secretary requires the applicant provide the following data:

(1) Performance (school-wide and by subgroup) for the past three years (if available) on statewide tests of all charter schools operated or managed by the applicant as compared to all students in other schools in the State or States at the same grade level, and as compared with other schools serving similar demographics of students;

(2) Annual student attendance and retention rates (school-wide and by subgroup) for the past three years (or over the life of the school, if the school has been open for fewer than three years), and comparisons with other similar schools; and

(3) Where applicable and available, high school graduation rates, college attendance rates, and college persistence rates (school-wide and by subgroup) for the past three years (if available) of students attending schools operated or managed by the applicant, and the methodology used to calculate these rates. When reporting data for schools in States that may have particularly demanding or low standards of proficiency (for example, *see* the report available at *http://nces.ed.gov/nationsreportcard/pdf/studies/2010456.pdf*), applicants are invited to discuss how their academic success might be considered against applicants from across the country.

(o) Provide such other information and assurances as the Secretary may require.

Proposed Selection Criteria

Background

Originally authorized in the Consolidated Appropriations Act, 2010 (and expected to continue under any legislation that provides the Department's FY 2011 appropriations), the CSP-Replication and Expansion of High-Quality Charter Schools grants are intended to assist eligible entities in replicating and substantially expanding their successful school models. To ensure that only applicants with successful models and a demonstrated capacity to open and operate high-quality charter schools receive grant funds, we have developed criteria to assess the quality of applicants, as well as the quality of the organizations they operate. We believe the following proposed selection criteria would ensure that only the highest-quality charter schools will be created and substantially expanded through these grants, and that the CSP's mission of substantially expanding the number of high-quality charter schools will be fulfilled. For this reason, we propose to award grants to eligible entities on the basis of the quality of applications submitted after taking into consideration one or more of the following proposed selection criteria as well as the requirements in the authorizing statute of the CSP and applicable Federal regulations.

Proposed Selection Criteria

The Assistant Deputy Secretary for Innovation and Improvement proposes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria, alone or in combination with one or more selection criteria from section 34 CFR 75.210, in any year in which we award grants for the replication and expansion of high-quality charter schools. In the notice inviting applications or the application package, or both, we will announce the maximum possible points assigned to each criterion.

(a) *Quality of the eligible applicant.* In determining the quality of the applicant, the Secretary considers the following factors:

(1) The degree, including the consistency over the past three years, to which the applicant has demonstrated success in significantly increasing student academic achievement and attainment for all students, including, as applicable, educationally disadvantaged students served by the charter schools operated or managed by the applicant.

(2) Either (i) The degree, including the consistency over the past three years, to which the applicant has demonstrated success in closing historic achievement gaps for the subgroups of students, described in section 1111(b)(2)(C)(v)(II) of the ESEA at the charter schools operated or managed by the applicant, or

(ii) The degree, including the consistency over the past three years, to which there have not been significant achievement gaps between any of the subgroups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA at the charter schools operated or managed by the applicant and significant gains in student academic achievement have been made with all populations of students served by the charter schools operated or managed by the applicant.

(3) The degree, including the consistency over the past three years, to which the applicant has achieved results (including performance on statewide tests, annual student attendance and retention rates, high school graduation rates, college

attendance rates, and college persistence rates (where applicable and available)) for low-income and other educationally disadvantaged students served by the charter schools operated or managed by the applicant that are significantly above the average academic achievement results for such students in the State.

(b) *Contribution in assisting educationally disadvantaged students.*

The contribution the proposed project will make in assisting educationally disadvantaged students served by the applicant to meet or exceed State academic content standards and State student academic achievement standards, and to graduate college- and career-ready. When responding to this selection criterion, applicants must discuss the proposed locations of schools to be created or substantially expanded and the student populations to be served.

(c) *Quality of the project design.*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and attainable. Applicants proposing to open schools serving substantially different populations than those currently served by the model for which they have demonstrated evidence of success must address the attainability of outcomes given this difference.

(d) *Quality of the management plan and personnel.*

The Secretary considers the quality of the management plan and personnel to replicate and substantially expand high-quality charter schools. In determining the quality of the management plan and personnel for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The business plan for improving, sustaining, and ensuring the quality and performance of charter schools created or substantially expanded under these grants beyond the initial period of Federal funding in areas including, but not limited to, facilities, financial management, central office, student academic achievement, governance, oversight, and human resources of the charter schools.

(3) A multi-year financial and operating model for the organization, a demonstrated commitment of current and future partners, and evidence of broad support from stakeholders critical to the project's long-term success.

(4) The plan for closing charter schools supported, overseen, or managed by the applicant that do not meet high standards of quality.

(5) The qualifications, including relevant training and experience, of the project director, chief executive officer or organization leader, and key project personnel, especially in managing projects of the size and scope of the proposed project.

Final Priorities, Requirements, Definitions, and Selection Criteria

We will announce the final priorities, requirements, definitions, and selection criteria in a notice in the **Federal Register**. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these proposed priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, definitions, and selection criteria justify the costs.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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 via the Federal Digital System at: *http://www.gpo.gov/fdsys.*

Dated: March 22, 2011.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–7125 Filed 3–24–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2010–1 of the Defense Nuclear Facilities Safety Board, Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board Recommendation 2010–1, concerning *Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers* was published in the **Federal Register** on November 30, 2010 (75FR 74022). In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Secretary of Energy transmitted the following response to the Defense Nuclear Facilities Safety Board on February 28, 2011.

ADDRESSES: Send comments, data, views, or arguments concerning the

Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Ms. Amanda Anderson, Nuclear Engineer, Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on March 17, 2011.

Mari-Josette Campagnone,

Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security.

February 28, 2011

The Honorable Peter S. Winokur
Chairman, Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

Dear Mr. Chairman: This is in response to your October 29, 2010, letter which provided Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 2010–1, *Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers.*

The Department of Energy (DOE) is strongly dedicated to the safety of the public, our workers, and the environment at all of our facilities. We share your conviction that a clear set of requirements and standards is vital for safe operations. In 2008, we began a comprehensive re-examination of our nuclear safety requirements to assure they were clear, concise, complete, and current. In March 2010, we enhanced our Directives Reform effort to better define and expedite it, and we have made good progress in revising key nuclear safety Directives and the DOE Nuclear Safety Policy.

We have not changed our interpretation of requirements for developing and approving Documented Safety Analyses (DSAs). We have made significant nuclear safety improvements by upgrading facility safety bases and designs and by improving our safety standards and procedures. Much has been learned and will continue to be learned about improving safety. With your assistance, we have applied the lessons learned from industry incidents to upgrade our requirements. Our improving safety record reflects these lessons.

Though DOE has an improving safety record, we always strive to do better. Complacency will not be tolerated. With this in mind, the Department has carefully evaluated Recommendation 2010–1 and how we can use it to improve nuclear safety at the Department. The Department partially accepts the Board's Recommendation; a detailed explanation is provided below. We have clarified aspects of sub-recommendation 1, 2, 3c, 4 and 5e. Several elements of Recommendation 2010–1 will be addressed in the revision of Standard 3009, *Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Documented Safety Analyses.* As we develop the Implementation Plan for Recommendation 2010–1, we will further engage the Board.

Sub-recommendation 1—Immediately affirm the requirement that unmitigated, bounding-type accident scenarios will be used at DOE's defense nuclear facilities to estimate dose consequences at the site boundary, and that a sufficient combination of SSCs must be designated safety class to prevent exposures at the site boundary from approaching 25 rem TEDE [Total Effective Dose Equivalent].

DOE Standard 3009 details DOE's expectations for accident analyses to identify hazard controls for most DOE nuclear facilities. DOE agrees that Standard 3009 specifies that the consequences of unmitigated accidents should to be compared to the 25 rem TEDE Evaluation Guideline to determine if safety class controls are warranted. As you know, new facilities follow the 25 rem TEDE limit as a siting criteria according to DOE Standard 1189, *Integration of Safety into the Design Process.* For existing facilities safety class Structures, Systems and Components (SSCs) are normally utilized to prevent exposures from exceeding 25 rem TEDE. Standard 3009 also includes provisions for use of other means and controls to assure safety where off-site exposures are not reduced to below 25 rem TEDE, or where SSCs are not available. The revised Standard 3009 will further clarify the use of the Evaluation Guideline in accident analyses for both new and existing facilities.

Sub-recommendation 2—For those defense nuclear facilities that have not implemented compensatory measures sufficient to reduce exposures at the site boundary below 25 rem TEDE, direct the responsible program secretarial officer to develop a formal plan to meet this requirement within a reasonable timeframe.

DOE's responsible Program Secretarial Officer has evaluated the safety measures planned or currently in place to protect the public at the few remaining defense nuclear facilities that have potential accident doses above the 25 rem TEDE, and has determined that these measures provide adequate protection. This conclusion is based on an evaluation of all protective measures in place at these facilities, including disciplined formal operations, training, safety management programs, control of materials, and layers of controls to prevent accidents and/or mitigate their consequences.

Consistent with DOE's commitment to continuous safety improvement, we will continue to evaluate options for enhancing the safety of these facilities. In some cases, such as the Plutonium Facility (PF–4) at Los Alamos National Laboratory, DOE anticipates that several near-term planned improvements will reduce the bounding mitigated dose to below 25 rem TEDE. Additionally, we have already made substantial progress in reducing the projected offsite dose that could result from specific types of accidents. For many limited life facilities we will achieve permanent, long-term risk reduction through deactivation and decommissioning. Once we revise DOE Standard 3009, DOE will evaluate the documented safety analyses for all facilities as part of the required periodic update process. The Implementation Plan will describe the steps that will be taken to evaluate safety improvement options for those facilities determined to need such improvements.

Sub-recommendation 3—Revise DOE Standard 3009–94 to identify clearly and unambiguously the requirements that must be met to demonstrate that an adequate level of protection for the public and workers is provided through a DSA. This should be accomplished, at a minimum, by: (followed by four paragraphs labeled a–d).

DOE is revising DOE Standard 3009 to clearly indicate which of its provisions are mandatory. DOE will implement the specific steps identified in paragraphs (a), (b), and (d) of this sub-recommendation. However, DOE will not commit to implementing paragraph (c) as written, because doing so would predetermine a specific outcome to the current revision process without any technical basis. This would be contrary to DOE's standards development process. DOE will consider the advice provided in paragraph (c) (i.e., identification of the criteria that must be met for safety class Systems, Structures and Components (SSCs)), during the Standard 3009 revision process.

The Implementation Plan will outline the development process and how the steps identified in all the paragraphs in this sub-recommendation will be followed.

Sub-recommendation 4—Amend 10 CFR Part 830 by incorporating the revised version of DOE Standard 3009–94 into the text as a requirement, instead of as a safe harbor cited in Table 2.

The purpose of a "safe-harbor" is to provide a standard methodology that, if followed, will provide credible analyses and adequate safety. Nothing in the concept implies that "safe-harbor" methodologies are the only way to meet requirements. Of course, alternative approaches must be approved by DOE, and the criteria for accepting these alternatives should be clearly defined.

DOE is planning to review 10 CFR 830 (issued in 2001), which identifies nuclear safety requirements, but we cannot commit to the exact language prescribed in the Recommendation-that is placing Standard 3009 in the body of the rule. As a part of our review, we will update DOE Standard 3009, clearly identifying those provisions that are mandatory. When DOE Standard 3009 is not applied, appropriate means for reviewing and improving alternative methodologies will be established. This will assure implementation of DOE Standard 3009, where appropriate, while maintaining the flexibility to improve the standard, as needed. This approach has allowed DOE to make several important improvements to DOE Standards in the past. Details of the revision process will be provided in the Implementation Plan.

Sub-recommendation 5—Formally establish the minimum criteria and requirements that govern Federal approval of the DSA, by revision of DOE Standard 1104–2009, and other appropriate documents. The criteria and requirements should include: (followed by five paragraphs labeled a–e).

DOE agrees with the need for clear guidelines and requirements on the appropriate delegation of nuclear safety authorities and will revise DOE Standard 1104–2009 and other appropriate DOE documents to achieve this. DOE will implement the specific steps identified in paragraphs (a) through (d) of this sub-recommendation. However, DOE cannot commit to implementing paragraph (e) as written, because it implies that quantitative risk-based decision making must be established and used. The Department is exploring how quantitative methods could be applied to support decision-making on safety issues at our sites and will keep the Board apprised of developments in this area. Today, deterministic and qualitative means are used.

The Department agrees that the decision to approve safety bases must rest on a documented conclusion. The conclusion should indicate that the safety basis provides a reasonable assurance that the facility can be operated safely, that the hazards have been adequately analyzed, and that the engineered and administrative controls provide adequate protection for the public, workers and the environment. The Implementation Plan will outline DOE's revision to standard 3009 and the safety basis development process, will clarify the safety basis approval process, and identify how the steps in this sub-recommendation will be addressed.

Sub-recommendation 6—Formally identify the responsible organization and identify the processes for performing independent oversight to ensure the responsibilities identified in Item 5 above are fully implemented.

DOE has already identified the responsible organization for performing independent oversight for the Secretary: the Office of Independent Oversight, within the Office of Health, Safety and Security (HSS). However, HSS Independent Oversight protocols and delegation processes will be reviewed and modified as necessary to assure adequate oversight of nuclear safety delegations. The Implementation Plan will describe the steps DOE will take, review and update the protocols and delegation processes.

We appreciate your advice and will continue working closely with the Board to improve the Department's Directives in a manner that meets our shared objectives to the safe, effective, and efficient execution of our mission. We look forward to working further with the Board and its staff as we prepare the Implementation Plan.

If you have any further questions please contact Glenn Podonsky, Chief, Office of Health, Safety and Security, at 202–287–6071.

Sincerely,

Steven Chu.

[FR Doc. 2011–7085 Filed 3–24–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–018]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Notice of Granting the Application for Interim Waiver of Samsung From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of granting application for interim waiver, and request for public comments.

SUMMARY: This notice announces receipt of and publishes the Samsung Electronics America, Inc. (Samsung) petition for waiver (hereafter, "petition") from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to Samsung's product lines that incorporate multiple defrost cycles. In its petition, Samsung provides an alternate test procedure that DOE recently published in an interim final rule. DOE solicits comments, data, and information concerning Samsung's petition and the suggested alternate test procedure. DOE also publishes notice of the grant of an interim waiver to Samsung.

DATES: DOE will accept comments, data, and information with respect to the Samsung Petition until, but no later than April 25, 2011.

ADDRESSES: You may submit comments, identified by case number "RF–017," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov* Include the case number [Case No. RF–017] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600,

Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7796. *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for automatic electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the pro-visions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. Petition for Waiver of Test Procedure

On January 27, 2011, Samsung filed a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung is designing new refrigerator-freezers that incorporate multiple defrost cycles. In its petition, Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure does not account for multiple defrost cycles. Therefore, Samsung has asked to use an alternate test procedure that DOE recently published in an interim final rule (75 FR 78810, December 16, 2010).

III. Application for Interim Waiver

Samsung also requests an interim waiver from the existing DOE test procedure. Under 10 CFR 430.27(b)(2), each application for interim waiver must demonstrate likely success of the Petition for Waiver and address the economic hardship and/or competitive disadvantage that is likely to result absent a favorable determination on the application for interim waiver." An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied; if it appears likely that the petition for waiver will be granted; and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE has determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. DOE understands, however, that absent an interim waiver, Samsung's products would not be accurately tested and rated for energy consumption because the current energy test procedure does not include test procedures for products with multiple defrost cycle types. Therefore, it appears likely that Samsung's petition for waiver will be granted.

For the reasons stated above, DOE grants Samsung's application for interim waiver from testing of its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters. Therefore, *it is ordered that:*

The application for interim waiver filed by Samsung is hereby granted for Samsung's refrigerator-freezer product lines that incorporate multiple defrost cycles subject to the specifications and conditions below.

1. Samsung shall not be required to test or rate its refrigerator-freezer product lines that incorporate multiple defrost cycles on the basis of the test procedure under 10 CFR part 430 subpart B, appendix A1.

2. Samsung shall be required to test and rate its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters according to the alternate test procedure as set forth in section IV, "Alternate test procedure."

[1] For editorial reasons, upon codification in the U.S. Code, part B was re-designated part A.

The interim waiver applies to the following basic model groups:

RS26*T***	RF266****	GFSF6KEX****
RSG257****	RF267****	GFSF6KKY****
RF428*****	RF268****	GFSL6KEX****
RFG293****	RF26X****	GFSL6KKY****
RFG295****	RB194****	GFSS6KEX****
RFG296****	RB195****	GFSS6KIX****
RFG297****	RB196****	GFSS6KKY****
RFG298****	RB197****	592 6570*
RFG299****	RB214****	592 6571*
RFG237****	RB215****	401.4100****
RFG238****	RB216****	401.40483800
RF4267****	RB217****	PFSF6PKX****
RFG267****	RF215****	PFSS6PKX****
RFG263****	RF217****	PFSS6SKX****
RSG309****	RF195****	PFSS9PKY****
RSG307****	RF197****	PFSS9SKY****
RF263****	DFSS9VKBSS	DFSS9VKBWW
RFG29P****	RFG29T****	DFSS9VKBBB
DFSF9VKBWW	DFSF9VKBBB	

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Samsung may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR 430.62.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

For the duration of the interim waiver, Samsung shall be required to test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, appendix A1, except that, for the Samsung products listed above only, include:

1. In section 1, *Definitions,* the following definition:

"Defrost cycle type" means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type. However, defrost achieved regularly during the compressor off-cycles by warming of the evaporator without active heat addition is not a defrost cycle type.

2. In section 4, *Test Period,* the following:

Systems with Multiple Defrost Frequencies. This section applies to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. A two-part method shall be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions. The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation, and will be conducted separately for each distinct defrost cycle type. For defrost cycle types involving the defrosting of both fresh food and freezer compartments, the freezer compartment temperature shall be used to determine test period start and stop times.

3. In section 5, *Test Measurements,* the following:

Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + \sum_{i=1}^{D} \left[\left(EP2_i - (EP1 \times T2_i / T1) \right) \times (12/CT_i) \right]$$

Where:

1440 = conversion factor to adjust to a 24-hour period in minutes per day;

EP1 = energy expended in kilowatt-hours during the first part of the test;

T1 = length of time in minutes of the first part of the test;

12 = factor to adjust for a 50-percent run time of the compressor in hours per day;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

CT_i is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to $(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;

CT_{Li} = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (CT_L must be greater than or equal to 6 but less than or equal to 12 hours);

CT_{Mi} = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one CT_M and/or CT_L value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CT_M and CT_L values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 12 and 84 shall be used, respectively.

D is the total number of distinct defrost cycle types.

V. Summary and Request for Comments

Through today's notice, DOE grants Samsung an interim waiver from the specified portions of the test procedure applicable to Samsung's new line of refrigerator-freezers with multiple defrost cycles and announces receipt of Samsung's petition for waiver from those same portions of the test procedure. DOE publishes Samsung's petition for waiver pursuant to 10 CFR 430.27(b)(1)(iv). The petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Samsung's specified refrigerator-freezers with multiple defrost cycles. Samsung is required to follow this alternate procedure as a condition of its interim waiver, and DOE is considering including this alternate procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Michael Moss, Director of Corporate Environmental Affairs, Samsung Electronics America, Inc., 18600 Broadwick St., Rancho Dominguez, CA 90220. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC on March 18, 2011.

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

January 27, 2011

Catherine Zoi
Energy Efficiency and Renewable Energy
Department of Energy
1000 Independence Avenue, SW., Washington, DC 20585

Dear Assistant Secretary Zoi:

Samsung Electronics America, Inc. ("Samsung") respectfully submits this request Application for Interim Waiver and Petition for Waiver to the Department of Energy ("DOE" or "the Department") for Samsung's single compressor refrigerator-freezers with multiple defrost cycles.

Reasoning

10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Additionally, 10 CFR Part 430.27(b)(2) allows an applicant to request an Interim Waiver if economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver.

Current test procedures as prescribed in Appendix A1 to Subpart B of Part 430 ("Appendix A1") inadequately addresses refrigerator-freezers with multiple defrost cycles, providing Samsung little ability to represent the energy data of its refrigerator-freezers with multiple defrost. DOE also recognized in 75 FR 78837 [2] that Appendix A1 to Subpart B of Part 430 does not address refrigerator-freezers with multiple defrost cycles, which supports Samsung's concerns about the ability to apply Appendix A1 to Samsung manufactured refrigerator-freezers. DOE also communicated that all manufacturers planning on marketing refrigerator-freezers with multiple defrost cycles must seek a waiver from the Department.[3]

Samsung expects that ■ of its new 2011 refrigerator-freezer models will utilize the multiple defrost cycles. Without the Interim Waiver, Samsung will face economic hardship due to inability to accurately represent its refrigerator-freezer's energy consumption, losing $■■ in sales. For these reasons, Samsung believes that the granting of Interim Waiver and Waiver to Samsung is warranted.

Request

In 75 FR 78810 (December 16, 2010), DOE issued an interim final rule for Appendix A ("Appendix A"), effective April 15, 2011, that effectively addresses test methodologies for refrigerator-freezers with multiple defrost cycles. Samsung requests that the April 15, 2011 Appendix A test methodology be expeditiously granted for Samsung refrigerator-freezers with multiple defrost cycles.

The new test methodology of Appendix A, effective on April 15, 2011, is appropriate and necessary for our refrigerator-freezers with multiple defrost cycles. Meanwhile, Samsung believes for the time being that the existing energy efficiency limits are adequate. Samsung therefore does not seek an alternate energy efficiency limit for these models at this time.

Samsung requests that the efficient limits under § 430.32(a) are applied to the following Samsung manufactured basic models:

RS26*T***	RF266****	GFSF6KEX****
RSG257****	RF267****	GFSF6KKY****
RF428*****	RF268****	GFSL6KEX****
RFG293****	RF26X****	GFSL6KKY****
RFG295****	RB194****	GFSS6KEX****
RFG296****	RB195****	GFSS6KIX****
RFG297****	RB196****	GFSS6KKY****
RFG298****	RB197****	592 6570*
RFG299****	RB214****	592 6571*
RFG237****	RB215****	401.4100****
RFG238****	RB216****	401.40483800
RF4267****	RB217****	PFSF6PKX****
RFG267****	RF215****	PFSS6PKX****
RFG263****	RF217****	PFSS6SKX****
RSG309****	RF195****	PFSS9PKY****
RSG307****	RF197****	PFSS9SKY****
RF263****		

Please feel free to contact me if you have any questions regarding Petition for Waiver and Application for Interim Waiver. I will be happy to discuss should any questions arise.

Sincerely,

Michael Moss,

Director of Corporate Environmental Affairs.

[FR Doc. 2011–7089 Filed 3–24–11; 8:45 am]

BILLING CODE 6450–01–P

[2] In DOE's view, the current energy test procedure does not include test procedures for products with multiple defrost cycle types. For this reason, there is no basis for manufacturers' claims that the amendment would impact energy use measurements. DOE has no documentation regarding the test procedures manufacturers are using to certify these products, and has received no petitions for waivers suggesting the need for any such test procedures.

[3] Until these amendments are required in conjunction with the 2014 standards, manufacturers introducing products equipped with multiple defrost cycle types should, consistent with 10 CFR 430.27, petition for a waiver since the modified version of Appendix A1 set out in today's notice will not include a specified method for capturing this energy usage.

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

State Energy Advisory Board (STEAB)

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 21, 2011 3:30 to 4:30 p.m. (EST) The call in number is

877–445–5075 and the passcode is 2402235515.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Senior Management Technical Advisor, Intergovernmental Projects, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401. *Telephone:* (303) 275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Review and update of task force accomplishments, review of March meeting of the Energy Efficiency and Conservation Block Grant (EECBG) sub-committee, begin planning for the June live Board meeting in Washington, DC, and provide an update to the Board on routine business matters and other topics of interest.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, *http://*www.steab.org.

Issued at Washington, DC, on March 21, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–7086 Filed 3–24–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13583–001]

Crane & Company; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing

b. *Project No.:* 13583–001

c. *Date filed:* March 9, 2011

d. *Applicant:* Crane & Company

e. *Name of Project:* Byron Weston Hydroelectric Project

f. *Location:* On the East Branch of the Housatonic River, in the Town of Dalton, Berkshire County, Massachusetts. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Chad Cox, GZA GeoEnvironmental, Inc., One Edgewater Drive, Norwood, MA 02062, (781) 278–5787.

i. *FERC Contact:* Brandon Cherry, (202) 502–8328 or *brandon.cherry@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* May 9, 2011.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*). Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. The Byron Weston Hydroelectric Project would consist of: (1) The existing 90-foot-long, 30-foot-high Byron Weston Dam No. 2; (2) an existing 0.94-acre impoundment with a normal water surface elevation of 1,116.7 feet NAVD (1988); (3) an existing intake structure, trashrack, and headgate; (4) an existing 6.5-foot-long, 6-foot-diameter penstock that conveys flow to an existing 50-foot-long, 9.5-foot-wide headrace canal connected to a new 5-foot-long, 4.4-foot-diameter penstock; (5) an existing powerhouse containing one new 250-kilowatt turbine generating unit; (6) a new steel draft tube placed within the existing tailrace; and (7) a new 100-foot-long, 600-volt transmission line connected to the Crane & Company mill complex. The proposed project is estimated to generate an average of 938,000 kilowatt-hours annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Massachusetts State Historic Preservation Officer (SHPO), as required by 106, National

Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

q. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate (*e.g.,* if scoping is waived, the schedule would be shortened).

Issue Deficiency Letter—May 2011
Issue Notice of Acceptance—July 2011
Issue Scoping Document—August 2011
Issue Notice ready for environmental analysis—October 2011
Issue Notice of the availability of the EA—March 2012

Dated: March 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7042 Filed 3–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–33–000]

Leader One Energy, LLC; Notice of Availability of the Environmental Assessment for the Proposed Leader One Gas Storage Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Leader One Gas Storage Project proposed by Leader One Energy, LLC (Leader One) in the above-referenced docket. Leader One requests authorization to construct and operate the Leader One Gas Storage Field including injection/withdrawal and observation wells, gathering lines, condensate handling facilities, and water disposal facilities; a new 18,000 horsepower compressor station; and about 22.4 miles of 24-inch-diameter pipeline and related facilities all in Adams County, Colorado.

The EA assesses the potential environmental effects of the construction and operation of the Leader One Gas Storage Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Leader One Gas Storage Project includes the following facilities:

Leader One Gas Storage Field

- Up to fourteen new vertical and/or horizontal gas storage injection/withdrawal wells;
- Evaluation of twelve existing wells for replugging and abandonment as needed in accordance with current state standards, or converting to observation wells;
- Up to six new observation wells, depending on the condition of the existing wells;
- About 5 miles of various diameter storage field gathering pipelines;
- One water disposal well;
- About 1.25 miles of water disposal pipeline;
- A new 18,000 horsepower compressor station;
- An electrical substation within the compressor station fenceline;
- Hydrocarbon dew point control and condensate handling equipment; and
- Condensate handling equipment at the wellheads.

Pipeline Facilities

- An approximately 17.6-mile-long, 24-inch-diameter natural gas header pipeline, the Leader One Header Pipeline;
- An approximately 4.8-mile-long, 24-inch-diameter natural gas header pipeline, the Leader One Header Pipeline Extension;
- Four launcher/receiver facilities; and
- Yards for construction laydown and support facilities.

Ancillary Facilities

- Valves, meters, filtration, safety, and cleaning and inspection equipment; and
- Buildings, communications and control equipment, emergency generation, and electrical supply.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before April 18, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP11–33–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, CP11–33). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Dated: March 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7045 Filed 3–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13840–000]

ECOsponsible, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On September 15, 2010, ECOsponsible, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Niagara River Community Hydro Project #2 (Niagara #2 Project or project) to be located on the Niagara River, near Lewiston, in Niagara County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Five hydrokinetic turbine support structures, each containing four 10-foot-diameter Spitfire Horizontal Axis Turbines rated at approximately 250 kilowatts (kW) each; (2) a 150-kilovolt (kV) underwater transmission line connecting the triads and transmitting electricity to an onshore collection substation and point of interconnection switchyard; (3) an operations and maintenance building to house the command center of the project's supervisory control and data acquisition system; and (4) appurtenant facilities. The estimated annual generation of the Niagara #2 Project would be 550,000 megawatt-hours.

Applicant Contact: Dennis Ryan, ECOsponsible, Inc., 120 Mitchell Road, East Aurora, NY 14052–9710, *phone:* (716) 655–3524.

FERC Contact: Allyson Conner (202) 502–6082.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13840–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7044 Filed 3–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13839–000]

ECOsponsible, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 15, 2010, ECOsponsible, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Niagara River Community Hydro Project (Niagara Project or project) to be located on the Niagara River, near Buffalo, in Erie County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) Five hydrokinetic turbine support structures, each containing four 10-foot-diameter Spitfire Horizontal Axis Turbines rated at approximately 250 kilowatts (kW) each; (2) a 150-kilovolt (kV) underwater transmission line connecting the triads and transmitting electricity to an onshore collection substation and point of interconnection switchyard; (3) an operations and maintenance building to house the command center of the project's supervisory control and data acquisition system; and (4) appurtenant facilities. The estimated annual generation of the Niagara Project would be 79,891 megawatt-hours.

Applicant Contact: Dennis Ryan, ECOsponsible, Inc., 120 Mitchell Road, East Aurora, NY 14052–9710, phone: (716) 655–3524.

FERC Contact: Allyson Conner (202) 502–6082.

Deadline for filing comments, motions to intervene, competing applications

(without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13839–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7043 Filed 3–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2829–004]

City of Loveland, CO; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent To File License Application and Request To Use the Traditional Licensing Process.

b. *Project No.:* 2829–004.

c. *Dated Filed:* February 11, 2011.

d. *Submitted by:* City of Loveland, Colorado (Loveland)

e. *Name of Project:* Loveland Hydroelectric Project.

f. *Location:* The existing 900-kilowatt project is located in Larimer County, Colorado on the Big Thompson River. The project occupies lands of the U.S. Forest Service.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Larry Howard, Loveland Water & Power, 200 E. Wilson Avenue, Loveland, CO 80537; (970) 962–3703.

i. *FERC Contact:* Jim Fargo at (202) 502–6095; or e-mail at *james.fargo@ferc.gov.*

j. Loveland filed its request to use the Traditional Licensing Process on February 11, 2011. Loveland notified the public of its request on February 7, 2011. In a letter dated March 17, 2011, the Director of the Office of Energy Projects approved Loveland's request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the Colorado State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Loveland as the Commission's non-Federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. Loveland filed a Pre-Application Document (PAD; (including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document (P–2829). For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2829. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 8, 2014.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: March 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–7041 Filed 3–24–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8996–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 03/14/2011 Through 03/18/2011

Pursuant to 40 CFR 1506.9.

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20110084, Draft EIS, USFS, OR, Galena Project, To Implement Several Resource Management Activities, Blue Mountain Ranger District Malheur National Forest, Town of John Day, Grant County, OR, Comment Period Ends: 05/09/2011, Contact: Robert Robertson 541–575–3061.

EIS No. 20110085, Draft EIS, FHWA, CA, State Route 180 Westside

Expressway Route Adoption Study, To Improve Mobility East and West through the Center of Fresno County and the San Joaquin Valley, Fresno County, CA, Comment Period Ends: 05/09/2011, Contact: G. William "Trais" Norris, III 559–243–8175.

EIS No. 20110086, Draft EIS, USACE, LA, New Orleans To Venice (NOV), Federal Hurricane Protection Levee. Restoring, Armoring and Accelerating the Completion of the Existing NOV, Plaquemines Parish, LA, Comment Period Ends: 05/09/2011, Contact: Christopher Koeppel 601–631–5410.

EIS No. 20110087, Draft EIS, DOE, CA, Topaz Solar Farm Project, Issuing a Loan Guarantee to Royal Bank of Scotland for Construction and Startup, San Luis Obispo County, CA, Comment Period Ends: 05/09/2011, Contact: Angela Colamaria 202–287–5387.

EIS No. 20110088, Final EIS, NRC, GA, Vogtle Electric Generating Plant Units 3 and 4, Construction and Operation, Application for Combined Licenses (COLs), NUREG–1947, Waynesbora, GA, Review Period Ends: 04/25/2011, Contact: Mallaecia Sutton 301–415–0673.

Dated: March 22, 2011.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–7115 Filed 3–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9286–3]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Clean Air Scientific Advisory Committee (CASAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) to conduct a quality review and approve draft reports from the CASAC Oxides of Nitrogen (NO_X) and Sulfur Oxides (SO_X) Secondary Review Panel (NO_X-SO_X Panel) and the CASAC Air Monitoring and Methods Subcommittee (AMMS).

DATES: The public teleconference will be held on May 12, 2011 from 9 a.m. to 11 a.m. (Eastern Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the teleconference may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1300 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2073; fax (202) 565–2098; or e-mail at *stallworth.holly@epa.gov.* General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including Oxides of Nitrogen and Oxides of Sulfur.

As noticed in 76 FR 4109–4110, the NO_X-SO_X Panel held a public meeting on February 15–16, 2011 to review EPA's *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur* (February 2011). On May 12, 2011, CASAC will review the draft report of the NO_X-SO_X Panel that provides advice on issues identified in the policy assessment.

As noticed in 76 FR 4346, the AMMS met on February 16, 2011 to review and provide advice on the scientific adequacy and appropriateness of EPA's draft documents on monitoring and methods for Oxides of Nitrogen (NO_X) and Sulfur (SOx_X). As noticed in 76 FR 12732–12733, the AMMS also held a public teleconference on March 29, 2011 to review and finalize its draft report.

The draft reports of the NO_X-SO_X Panel and the AMMS will be posted at the CASAC Web site. To access these draft reports, go to the CASAC Web site at *http://www.epa.gov/casac* and click on the calendar link for May 12, 2011 on the blue navigation bar.

Technical Contact and URL for EPA's *Policy Assessment for the Review of the Secondary National Ambient air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur* (February 2011): Any technical questions concerning the above-referenced policy assessment can be directed to Dr. Richard Scheffe at *scheffe.rich@epa.gov* or 919–541–4650. The document is posted at *http://yosemite.epa.gov/sab/sabproduct.nsf/bf498bd32a1c7fdf85257242006dd6cb/7f4c00f9da9bb75e852577ed005f026c!OpenDocument&Date=2011-02-15.*

Technical Contact and URL for EPA's Monitoring Documents for NO_X and SO_X: Any technical questions concerning EPA's draft monitoring documents for NO_X and SO_x and proposed methods for assessing levels of nitrogen and sulfur deposition should contact Dr. Richard Scheffe at *scheffe.rich@epa.gov* or 919–541–4650. Review documents on NO_X and SO_X monitoring can be assessed at *http://yosemite.epa.gov/sab/sabproduct.nsf/bf498bd32a1c7fdf85257242006dd6cb/eea38cc34cc1f86f8525781d005866e6!OpenDocument&Date=2011-02-16.*

Availability of Meeting Materials: A meeting agenda and other materials for the meeting will be placed on the CASAC Web site on the Web page reserved for the May 12, 2011 teleconference, accessible through the calendar link on the blue navigation sidebar at *http://www.epa.gov/casac.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to CASAC will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information included. Members of the public wishing to provide comment should contact the Designated Federal Officer directly.

Oral Statements: To be placed on the public speaker list for the teleconference, interested parties should notify Dr. Holly Stallworth, DFO, by e-mail no later than May 5, 2011.

Individuals making oral statements will be limited to three minutes per speaker.

Written Statements: Written statements for the teleconference should be received in the SAB Staff Office by May 5, 2011 so that the information may be made available to the CASAC for its consideration prior to this teleconference. Written statements should be supplied to the DFO via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). It is the SAB Staff Office policy to post written comments on the Web page for the advisory meeting or teleconference. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: March 16, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–7092 Filed 3–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9286–6]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board Panel for the Oil Spill Research Strategy Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the SAB Panel to review EPA's Draft Oil Spill Research Strategy.

DATES: The meeting will be held on April 11, 2011 from 9 a.m. to 5 p.m. and April 12, 2011 from 8 a.m. to 12:30 p.m. (Eastern Time).

ADDRESSES: The Panel meeting will be held at the Omni Shoreham, 2500 Calvert Street, NW., Washington, DC 20008, Phone (202) 234–0700.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this meeting may contact Mr. Thomas Carpenter, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–4885; by fax at (202) 565–2098 or via e-mail at General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab.* Any inquiry regarding EPA's Draft Oil Spill Research Strategy should be directed to Patricia Erickson, EPA Office of Research and Development (ORD), at *erickson.patricia@epa.gov* or (513) 569–7406.

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that an ad hoc SAB Panel will hold a public meeting to review EPA's Draft Oil Spill Research Strategy. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The Draft Oil Spill Research Strategy discusses proposed research and collaborative approaches for four activities related to oil spills: Dispersants, alternative remediation technologies, coastal inland restoration, and human health effects. The Deep Water Horizon spill identified the need for additional research on alternative spill response technologies; environmental impacts of chemical dispersants under deep sea application conditions; the fate and toxicity of dispersants and dispersed oil; chronic health effects for spill response workers and the public; and shoreline and wetland impacts, restoration and recovery. Accordingly, EPA developed the research strategy to address these needs, as they pertain to EPA's responsibilities for oil spills, and has requested that the SAB review their draft strategy.

EPA is seeking SAB review and comment regarding the Draft Oil Spill Research Strategy. Information about formation of the panel and the draft strategy can be found at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Oil%20Spill%20Research%20Strategy?OpenDocument.* The purpose of the April 11–12, 2011, meeting is for the Panel to discuss their review comments on EPA's draft Oil Spill Research Strategy.

Availability of Meeting Materials: The agenda and the draft EPA Oil Spill Research Strategy will be available on the SAB Web site at *http://www.epa.gov/sab* in advance of the meeting.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for SAB panels to consider or if it relates to the clarity or accuracy of the technical information included. Members of the public wishing to provide comment should contact the Designated Federal Officer for the relevant advisory committee directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public meeting will be limited to five minutes per speaker. Interested parties should contact Mr. Thomas Carpenter, DFO, in writing (preferably via e-mail), at the contact information noted above, by March 25, 2011 to be placed on the list of public speakers for the meeting. Written Statements: *Written statements* should be received in the SAB Staff Office by March 25, 2011 so that the information may be made available to the SAB Oil Spill Research Review Panel for their consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are requested to provide two versions of each document submitted: One each with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference.

Members of the public should be aware that their contact information, if included in any written comments, will appear on the Web. Furthermore, special care should be taken not to include copy-righted material.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Thomas Carpenter at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 22, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2011–7094 Filed 3–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0541; FRL–8841–7]

Petition To Suspend and Cancel All Registrations for the Soil Fumigant Iodomethane (Methyl Iodide); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On March 31, 2010, EPA received a petition from Earthjustice requesting that all uses of iodomethane (methyl iodide) be suspended and cancelled. The Agency is posting this petition for public comment. Following the public comment period, EPA will evaluate the petitioner's request, consistent with the statutory standards set forth in the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: Comments must be received on or before April 25, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0541, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0541. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Karen Samek, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–8825; *fax number:* (703) 305–6920; *e-mail address: samek.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the agency taking?

On March 31, 2010, EPA received a petition from Earthjustice requesting that all uses of iodomethane (methyl iodide) be suspended and cancelled. The Agency is posting this petition for public comment. Following the public comment period, EPA will evaluate the petitioner's request, consistent with the statutory standards set forth in the Federal Insecticide, Fungicide, and Rodenticide Act.

List of Subjects

Environmental protection, Chemicals, Iodomethane, Methyl iodide, Pesticide regulation, Pests and pesticides, Petition to cancel, Petition to suspend.

Dated: March 17, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–7117 Filed 3–24–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT–IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Tuesday, March 29, 2011 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Local Cost Policy.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3957.

Jonathan J. Cordone,

Senior Vice President and General Counsel.

[FR Doc. 2011–7122 Filed 3–23–11; 4:15 pm]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 21, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 24, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail *Judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0053.

Title: Experimental Authorization Applications—FCC Form 702, Consent to Assign; and FCC Form 703, Consent to Transfer Control of Corporation Holding Station License.

Form Nos.: FCC Form 702 and 703.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time per Response: 0.6 hours (36 minutes).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154, 302 and 303.

Total Annual Burden: 30 hours.

Total Annual Cost: $3,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, if respondents wish to request that their information be withheld from public inspection, they may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. The Commission is reporting a 6 hour increase and a $600 annual cost increase. The reason for the increase is that the Commission is merging the burden estimates together into one comprehensive experimental authorization application information collection.

The Commission currently has OMB approval for FCC Form 702 under OMB Control Number 3060–0068 and for FCC Form 703 under OMB Control Number 3060–0053. The Commission is revising this information collection (IC) to merge FCC Form 702 into this collection. There is no change in the reporting or

third party disclosure requirements. We are simply consolidating these two information collections into one comprehensive collection. Upon OMB approval, the Commission will discontinue OMB Control Number 3060–0068 and retain OMB Control Number 3060–0053 as the active OMB number.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–6987 Filed 3–24–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 21, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 24, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or e-mail *judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0526.

Title: Section 69.123, Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Company Facilities.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 17 respondents; 17 responses.

Estimated Time per Response: 48 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154(i), 154(j), 201–205, 303(r), and 403.

Total Annual Burden: 816 hours.

Total Annual Cost: $13,855.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No information of a confidential nature is being sought. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. There is no change in the Commission's estimated number of respondents, responses and burden hours. However, there is a $680 increase in annual cost which is due to an increase in the filing fee of $815.

The Commission requires Tier 1 local exchange carriers (LECs) to provide expanded opportunities for third party interconnection with their interstate special access facilities. The LECs are permitted to establish a number of rate zones within study areas in which expanded interconnection are operational. In a previous rulemaking, *Fifth Report and Order,* CC Docket No. 96–262, the Commission allowed price cap LECs to define the scope and number of zones within a study area. These LECs must file and obtain approval of their pricing plans which will be used by FCC staff to ensure that the rates are just, reasonable and nondiscriminatory.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–6988 Filed 3–24–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

March 16, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 25, 2011.

If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0433.

Title: Basic Signal Leakage Performance Report.

Form Number: FCC Form 320.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,920 respondents and 5,920 responses.

Frequency of Response: Recordkeeping requirement, Annual reporting requirement.

Estimated Time per Hours: 20 hours.

Total Annual Burden: 118,400 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Cable television system operators and Multichannel Video Programming Distributors (MPVDs) who use frequencies in the bands 108–137 and 225–400 MHz (aeronautical frequencies) are required to file a Cumulative Signal Leakage Index (CLI) derived under 47 CFR 76.611(a)(1) or the results of airspace measurements derived under 47 CFR 76.611(a)(2). This filing must include a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This yearly filing of FCC Form 320 is done in accordance with 47 CFR 76.1803.

OMB Control Number: 3060–0289.

Title: Section 76.76.601(a) Performance Tests, Section 76.1704(a)(b) Proof of Performance Test Data, Section 76.1705 Performance Tests (Channels Delivered) and Section 76.1717, Compliance with Technical Standards.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and State, local or tribal government.

Number of Respondents and Responses: 8,250 respondents; 12,185 responses.

Estimated Time per Response: 0.5–70 hours.

Frequency of Response: Record keeping requirement, Semi-annual and Triennial reporting requirements; Third party disclosure requirement.

Total Annual Burden: 276,125 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 624(e) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.601(b) requires the operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a) and shall be as follows:

(1) For cable television systems with 1,000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (*e.g.,* 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, *etc.*). In addition, for technically integrated portions of cable systems that are not mechanically continuous (*i.e.,* employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a) (3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (*e.g.,* 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit of 300 to 400 MHz, *etc.*). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to

which the system complies with the technical standards set forth in § 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

47 CFR 76.601 the local franchising authority shall notify the cable operator, who will then be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected.

47 CFR 76.1704 requires that proof-of-performance tests required by 47 CFR 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. If a signal leakage log is being used to meet proof-of-performance test recordkeeping requirements in accordance with Section 76.601, such a log must be retained for the period specified in 47 CFR 76.601(d).

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station; Report and Order in MM Docket No. 99–25 Creation of Low Power Radio Service; Sections 73.807, 73.809, 73.865, 73.870, 73.871, 73.872, 73.877, 73.878, 73.318, 73.1030, 73.1207, 73.1212, 73.1230, 73.1300, 73.1350, 73.1610, 73.1620, 73.1750, 73.1943, 73.3525, 73.3550, 73.3598, 11.61(ii), FCC Form 318.

Form Number: FCC Form 318.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 16,659 respondents, 23,377 responses.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303, 308 and 325(a) of the Communications Act of 1934, as amended.

Estimated Time per Response: 0.0025 minutes–12 hours.

Total Annual Burden: 34,396 hours.

Total Annual Costs: $23,850.

Nature and Extent of Confidentiality: Confidentiality is not required for this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This information collection accounts for the following requirements:

47 CFR 73.807 sets forth minimum distance separation requirements for LPFM stations. The Third Report and Order allows LPFM stations to file second-adjacent channel waiver requests of this Rule by filing a Form 318 if it is at risk of displacement by an encroaching full-service station application.

47 CFR 73.809(b) states that an LPFM station will be provided an opportunity to demonstrate in connection with the processing of the commercial or NCE FM application that interference as described in paragraph (a) of this section is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial or NCE FM station.

47 CFR 809(c) states complaints of actual interference by an LPFM station subject to paragraphs (a) and (b) of this section must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

47 CFR 73.809(e) states that in each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, DC, after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

47 CFR 73.865 allows a change in the name of an LPFM licensee where no change in ownership or control is involved to be accomplished by a written notification by the licensee to the Commission. This section also prohibits assignment of an LPFM authorization or transfer of control of an LPFM permittee or licensee if (a) consideration exceeds the depreciated fair market value of the physical equipment and facilities, and/or (b) the transferee or assignee is incapable of satisfying all eligibility criteria that apply to a LPFM licensee. Transfers of control involving a sudden change of more than 50 percent of an LPFM's governing board shall not be deemed a substantial change in ownership or control, subject to the filing of an FCC Form 316.

47 CFR 73.870 and 73.871 allow licensees and permittees to file minor change applications and minor amendments to pending FCC Form 318 applications by requesting authority for transmitter site relocation of up to 5.6 kilometers for LP100 facilities and up to 3.2 kilometers for LP10 facilities. The Third Report and Order amended these Rules to also allow LPFM applicants with mutually exclusive applications to file minor amendments and minor changes that reflect changes to time-sharing agreements, including universal agreements that supersede involuntary arrangements.

47 CFR 73.870 and 73.871 allow voluntary time-share applicants to relocate an LPFM transmitter to a central location by filing amendments to their pending FCC Form 318 applications.

47 CFR 73.870(d) state petitions to deny such mutually exclusive LPFM applications may be filed within 30 days of such public notice and in accordance with the procedures set forth at § 73.3584. A copy of any petition to deny must be served on the applicant.

47 CFR 73.872(c) states if mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as minor amendments to the time-share proponents' applications, and shall become part of the terms of the station authorization. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents points will be aggregated to determine the tentative selectees.

(1) Time-share proposals shall be in writing and signed by each time-share proponent, and shall satisfy the following requirements:

(i) The proposal must specify the proposed hours of operation of each time-share proponent;

(ii) The proposal must not include simultaneous operation of the time-share proponents; and

(iii) Each time-share proponent must propose to operate for at least 10 hours per week.

(2) Where a station is authorized pursuant to a time-sharing proposal, a change of the regular schedule set forth therein will be permitted only where a written agreement signed by each time-sharing permittee or licensee and complying with requirements in paragraphs (c)(1)(i) through (iii) of this section is filed with the Commission, Attention: Audio Division, Media Bureau, prior to the date of the change.

47 CFR 73.872(d)(1) states if a tie among mutually exclusive applications is not resolved through voluntary time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability and applicants with tied, grantable applications will be eligible for equal, successive, non-renewable license terms of no less than one year each for a total combined term of eight years, in accordance with § 73.873. Eligible applications will be granted simultaneously, and the sequence of the applicants' license terms will be determined by the sequence in which they file applications for licenses to cover their construction permits based on the day of filing, except that eligible applicants proposing same-site facilities will be required, within 30 days of written notification by the Commission staff, to submit a written settlement agreement as to construction and license term sequence. Failure to submit such an agreement will result in the dismissal of the applications proposing same-site facilities and the grant of the remaining, eligible applications.

47 CFR 73.872(d)(2) states groups of more than eight tied, grantable applications will not be eligible for successive license terms under this section. Where such groups exist, the staff will dismiss all but the applications of the eight entities with the longest established community presences, as provided in paragraph (b)(1) of this section. If more than eight tied, grantable applications remain, the applicants must submit, within 30 days of written notification by the Commission staff, a written settlement agreement limiting the group to eight. Failure to do so will result in dismissal of the entire application group.

47 CFR 73.877 requires each LPFM station to maintain a station log. Each log entry must include the time and date of observation and the name of the person making the entry. This log must contain entries of the information specified in this section.

47 CFR 73.878 requires licensees to make available to FCC representatives during regular business hours, the station records and logs. Upon request of the FCC, the licensee must mail (by either registered mail, return receipt requested, or certified mail, return receipt requested) the station records and logs. The licensee must retain the return receipt until such records are returned to the licensee.

Unattended operation. The Report and Order requires that LPFM stations that will operate unattended will be required to advise the Commission by letter of the unattended operation and provide an address and telephone number where a responsible party can be reached during such times.

47 CFR 73.318 requires LPFM stations to resolve all complaints received on blanketing interference occurring within the immediate vicinity of the antenna site for one year after commence of transmissions with new or modified facilities. Licensee shall provide technical information, notifications or assistance to complainants on remedies for blanketing interference.

47 CFR 73.1030 requires LPFM stations to coordinate, notify, and provide protection to the radio quiet zones at Green, West Virginia and at Boulder, Colorado. In addition, LPFM applicants in Puerto Rico will need to coordinate and notify Cornell University regarding the radio coordination zone on that island. This requirement is necessary to ensure that research work at these installations will not be disrupted.

47 CFR 73.1207 requires that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. 47 CFR 73.1207 also requires stations that use the National Bureau of Standards ("NBS") time signals to notify the NBS semiannually of use of time signals.

47 CFR 73.1212 requires a broadcast station to identify the sponsor of any matter for which consideration is provided. For matter advertising commercial products or services, generally the mention of the name of the product or service constitutes sponsorship identification. In addition, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, licensee is required to retain a list of the executive officers, or board of directors, or executive committee, *etc.,* of the organization paying for such matter. Sponsorship announcements are waived with respect to the broadcast of "want ads" sponsored by an individual but the licensee shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

47 CFR 73.1230 requires that the station license and any other instrument of station authorization be posted in a conspicuous place at the place the licensee considers to be the principal control point of the transmitter. 47 CFR 73.1300 allows broadcast stations to be operated either attended or unattended. Regardless of which method is employed, licensees must employ written procedures and have them in the station's files to ensure compliance with the rules governing the Emergency Alert System.

47 CFR 73.1350 requires licensees of LPFM broadcast stations operating by remote control points at places other than the main studio or transmitter site locations to send written notifications containing the remote locations to the FCC within three days after commencing remote control operations from such points.

47 CFR 73.1610 requires the permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards.

47 CFR 73.1620 requires that upon completion of construction of a LPFM station, the licensee may begin program tests upon notification to the Commission.

47 CFR 73.1750 requires a broadcast licensee to notify the FCC of permanent discontinuance of operation and to forward the station license and other instruments of authorization immediately after discontinuance of operation.

47 CFR 73.1943 requires licensees of broadcast stations to keep and permit public inspection of a complete record of all requests for broadcast time, together with an appropriate notation showing the disposition made by the licensee of such request.

47 CFR 73.3525 requires applicants for a construction permit for a broadcast station to obtain approval from the FCC to withdraw, dismiss or amend its application pursuant to a settlement agreement when that application is in conflict with another application

pending before the FCC. This request for approval to withdraw, dismiss or amend an application should contain a copy of the agreement and an affidavit of each party to the agreement. In the event that the proposed withdrawal of a conflicting application would unduly impede achievement of a fair, efficient and equitable distribution of radio service, the FCC must issue an order providing further opportunity to apply for the facilities specified in the application(s) withdrawn.

47 CFR 73.3550 requests for call sign assignment for a LPFM station must be made using the Commission's electronic call sign system.

47 CFR 73.3598 allows an LPFM permittee unable to complete construction within the timeframe specified in the original construction permit may apply for an eighteen month extension upon a showing of good cause.

47 CFR 11.61(ii) states DBS providers, analog and digital class D non-commercial educational FM stations, and analog and digital LPTV stations are required to log the receipt of emergency alert system transmissions.

This submission also contains FCC Form 318, Application for Construction Permit for a Low Power FM Broadcast Station and its accompanying instructions and worksheets.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–6989 Filed 3–24–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Gerald John Baack, individually, and in concert with Sherri Lynn Baack,* both of Apple Valley, Minnesota; to acquire voting shares of Bridgewater Bancshares, Inc., and thereby indirectly acquire voting shares of Bridgewater Bank, both of Bloomington, Minnesota.

2. *Najib G. Schlosstein,* Arcadia, Wisconsin; to acquire voting shares of GEBSCO, and thereby indirectly acquire voting shares of Alliance Bank, both of Mondovi, Wisconsin.

In connection with the above application, Castlerock Museum, Inc., Alma, Wisconsin, as a member of the Schlosstein Family Group, has applied to retain voting shares of GEBSCO, and thereby indirectly retain voting shares of Alliance Bank, both of Mondovi, Wisconsin.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *James E. Landen,* as trustee of the Mary M. Huerter Irrevocable Trust; the Megan L. Huerter Irrevocable Trust; The James V. Huerter III Irrevocable Trust; The Rebecca F. Huerter Irrevocable Trust; The Thomas L. Huerter Irrevocable Trust; The Mary C. Landen Irrevocable Trust; The Clarence L. Landen IV Irrevocable Trust; The Kelly A. Landen Irrevocable Trust; The Elizabeth L. Kerr Irrevocable Trust; The Jordan M. Kerr Irrevocable Trust; and The J. Michael Kerr Jr. Irrevocable Trust, all of Omaha, Nebraska; to retain voting shares of Security National Corporation, and thereby indirectly retain voting shares of Security National Bank of Omaha, both of Omaha, Nebraska.

Board of Governors of the Federal Reserve System, March 22, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–7059 Filed 3–24–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2011.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Carroll Bancorp, Inc.,* Sykesville, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Carroll Community Bank, Sykesville, Maryland, upon its conversion from a mutual state savings bank to a state-chartered stock commercial bank.

Board of Governors of the Federal Reserve System, March 22, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–7060 Filed 3–24–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Group on Prevention, Health Promotion, and Integrative and Public Health; Notice of Meeting

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of the Surgeon General of the United States Public Health Service.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that a meeting is scheduled to be held for the Advisory Group on Prevention, Health Promotion, and Integrative and Public

Health (the "Advisory Group"). The meeting will be open to the public. Information about the Advisory Group and the meeting agenda can be obtained by accessing the following Web site: *http://www.healthcare.gov/center/councils/nphpphc/index.html*.

DATES: The meeting will be held on April 12–13, 2011.

ADDRESSES: Federal Trade Commission Conference Center; 601 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Office of the Surgeon General, 200 Independence Ave., SW., Hubert H. Humphrey Building, Room 701H, Washington, DC 20001; 202–205–4867; *prevention.council@hhs.gov*.

SUPPLEMENTARY INFORMATION: On June 10, 2010, the President issued Executive Order 13544 to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. This legislation mandated that the Advisory Group was to be established within the Department of Health and Human Services. The charter for the Advisory Group was established by the Secretary of Health and Human Services on June 23, 2010; the charter was filed with the appropriate Congressional committees and Library of Congress on June 24, 2010. The Advisory Group has been established as a non-discretionary Federal advisory committee.

The Advisory Group has been established to provide recommendations and advice to the National Prevention, Health Promotion and Public Health (the "Council"). The Advisory Group shall provide assistance to the Council in carrying out its mission.

The Advisory Group membership shall consist of not more than 25 non-Federal members to be appointed by the President. The membership shall include a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine. On January 27, 2011, the President appointed 13 individuals to serve as members of the Advisory Group. This will be the inaugural meeting of the Advisory Group.

Public attendance at the meeting is limited to space available. To ensure adequate seating is available to accommodate public attendance, members of the public who wish to attend the meeting should register. Individuals should notify the designated contact to register for public attendance. Individuals who plan to attend the meeting and need special assistance and/or accommodations, *i.e.,* sign language interpretation or other reasonable accommodations, should notify the designated point of contact for the Advisory Group. The public will have opportunity to provide comments to the Advisory Group on April 12th, 2011; public comment will be limited to 3 minutes per speaker. Registration for the public comment session also is required. Individuals wishing to provide comment to the Advisory Group should notify the designated contact for the Advisory Group. Any member of the public who wishes to have printed material distributed to the Advisory Group for this scheduled meeting should submit material to the designated point of contact for the Advisory Group no later than March 30, 2011 5 p.m. ET.

Dated: March 17, 2011.

Regina Benjamin,

VADM, USPHS, Surgeon General.

[FR Doc. 2011–7026 Filed 3–24–11; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

ACTION: Notice of meeting.

Authority: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provision of Public Law 92–463, as amended (5 U.S.C. App), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the next federal advisory committee meeting regarding the national health promotion and disease prevention objectives for 2020. This meeting will be open to the public and will be held online via WebEx software. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 (Committee) will address efforts to implement the nation's health promotion and disease prevention objectives and strategies to improve the health status and reduce health risks for Americans by the year 2020. The Committee will provide to the Secretary of Health and Human Services advice and consultation for implementing Healthy People 2020, the nation's health promotion and disease prevention goals and objectives, and provide recommendations for initiatives to occur during the implementation phase of the goals and objectives. HHS will use the recommendations to inform the implementation of Healthy People 2020.

DATES: The Committee will meet on April 13, 2011 from 1 p.m. to 3 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held online via WebEx software. For detailed instructions about how to make sure that your windows computer and browser is set up for WebEx, please visit the "Secretary's Advisory Committee" Web page of the Healthy People Web site (*http://www.healthypeople.gov/2020/about/advisory/default.aspx*) and click on "Register to Attend."

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8259 (telephone), (240) 453–8281 (fax). Additional information is available on the Internet at *http://www.healthypeople.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The Committee will review the Institute of Medicince's recommendations for the Healthy People 2020 Leading Health Indicators and HHS' current and proposed plans for Implementing Healthy People 2020.

Background: Every 10 years, through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with the new knowledge of current data, trends, and innovations to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives to meet a broad range of health needs, encouraged collaborations across sectors, guided individuals toward making informed health decisions, and measured the impact of our prevention and health promotion activities. On December 2, 2010, the HHS launched Healthy People 2020 and

its 42 topic areas. Healthy People 2020 reflects assessments of major risks to health and wellness, changing public health priorities, and emerging issues related to our nation's health, preparedness, and prevention.

Public Participation at Meeting: Members of the public are invited to listen to the online Committee meeting. There will be no opportunity for oral public comments during the online Committee meeting. Written comments, however, can be e-mailed to healthypeople@nhic.org.

To listen to the Committee meeting, individuals must pre-register to attend at the Healthy People Web site located at *http://www.healthypeople.gov*. Participation in the meeting is limited. Registrations will be accepted until maximum WebEx capacity is reached and must be completed by 9 a.m. EDT on April 12, 2011. A waiting list will be maintained should registrations exceed WebEx capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available.

Registration questions may be directed to Hilary Scherer at *HP2020@norc.org* (e-mail), (301) 634–9374 (phone) or (301) 634–9301 (fax).

Dated: March 21, 2011.

Carter Blakey,

Acting Deputy Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 2011–7074 Filed 3–24–11; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on January 12th, 2011 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by April 25, 2011.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Questionnaire and Data Collection Testing, Evaluation, and Research for the Agency for Healthcare Research and Quality

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) re-approve generic pre-testing clearance 0935–0124 for three years to facilitate AHRQ's efforts to (1) Employ evaluation-type methods and techniques to improve AHRQ's current data collection and estimation procedures, (2) develop new collections and procedures, including toolkits, and (3) revise existing collections and procedures. AHRQ uses techniques to simplify data collection and estimation procedures, reduce respondent burden, and improve efficiencies to meet the needs of individuals and small business respondents who may have reduced budgets and staff. AHRQ believes that developing, testing, and evaluating data collection and estimation procedures using survey methods and other techniques in anticipation of agency-sponsored studies can improve its information collection efforts and the products it develops and allow AHRQ to be more responsive to fast-changing developments in the healthcare research field.

This clearance request is limited to research on data collection, toolkit development, and estimation procedures and reports and does not extend to the collection of data for public release or policy formation. The current clearance was granted on April 3rd, 2008 and expires on April 30th, 2011.

This generic clearance will allow AHRQ to draft and test toolkits, survey instruments and other data collection and estimation procedures more quickly and with greater lead time, thereby managing project time more efficiently and improving the quality of the data AHRQ collects. In some instances, the ability to test and evaluate toolkits, data collection and estimation procedures in anticipation of work or early in a project may result in the decision not to proceed with additional activities, thereby saving both public and private resources and effectively eliminating respondent burden.

Many of the tools AHRQ develops are made available to the private sector to assist in improving health care quality. The health and health care environment changes rapidly and requires a quick response from AHRQ to provide refined tools. This generic clearance will facilitate AHRQ's response to this changing environment.

These preliminary research activities will not be used by AHRQ to regulate or sanction its customers. They will be entirely voluntary and the confidentiality of respondents and their responses will be preserved. Proposed information collections submitted under this generic clearance will be reviewed and acted upon by OMB within 14 days of submission to OMB.

Method of Collection

The information collected through preliminary research activities will be used by AHRQ to employ techniques to (1) Improve AHRQ' s current data collection and estimation procedures, (2) develop new collections and procedures, including toolkits, and (3) revise existing collections and procedures in anticipation or in response to changes in the health or health care field. The end result will be improvement in AHRQ's data collections and procedures and the quality of data collected, a reduction or minimization of respondent burden, increased agency efficiency, and improved responsiveness to the public.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours, over the full 3 years of this clearance, for the respondents' time to participate in the research activities that may be conducted under this generic clearance. Mail surveys will be conducted with about 6,000 persons (2,000 per year for 3 years) and are estimated to average 20 minutes. Mail surveys may also be sent to respondents

via e-mail, and may include a telephone non-response follow-up. Telephone non-response follow-up for mailed surveys is not counted as a telephone survey in Exhibit 1. Not more than 600 persons, over 3 years, will participate in telephone surveys that will take about 40 minutes. Web-based surveys will be conducted with no more than 3,000 persons and will require no more than 10 minutes to complete. About 1,500 persons will participate in focus groups which may last up to two hours, while in-person interviews will be conducted with 600 persons and will take about 1 hour. Automated data collection will be conducted for about 1,500 persons and could take up to 1 hour. Cognitive testing will be conducted with about 600 persons and is estimated to take ½; hours to complete. The total burden over 3 years is estimated to be 8,900 hours (about 2,967 hours per year).

Exhibit 2 shows the estimated cost burden over 3 years, based on the respondent's time to participate in these research activities. The total cost burden is estimated to be $298,239.

EXHIBIT 1—ESTIMATED BURDEN HOURS OVER 3 YEARS

Type of information collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Mail/e-mail *	6,000	1	20/60	2,000
Telephone	600	1	40/60	400
Web-based	3,000	1	10/60	500
Focus Groups	1,500	1	2.0	3,000
In-person	600	1	1.0	600
Automated **	1,500	1	1.0	1,500
Cognitive Testing ***	600	1	1.5	900
Totals	13,800	na	na	8,900

* May include telephone non-response follow-up in which case the burden will not change.
** May include testing of database software, CAPI software or other automated technologies.
*** May include cognitive interviews for questionnaire or toolkit development, or "think aloud" testing of prototype Web sites.

EXHIBIT 2—ESTIMATED COST BURDEN OVER 3 YEARS

Type of information collection	Number of respondents	Total burden hours	Average wage rate *	Total cost burden
Mail/e-mail	6,000	2,000	$33.51	$67,020
Telephone	600	400	33.51	13,404
Web-based	3,000	500	33.51	16,755
Focus Groups	1,500	3,000	33.51	100,530
In-person	600	600	33.51	20,106
Automated	1,500	1,500	33.51	50,265
Cognitive Testing	600	900	33.51	30,159
Totals	13,800	8,900	na	298,239

* Based upon the average wages for 29–000 (Healthcare Practitioner and Technical Occupations), "National Compensation Survey: Occupational Wages in the United States, May 2009," U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Information collections conducted under this generic clearance will in some cases be carried out under contract. Assuming four data collections per year (either mail/e-mail, telephone, Web-based or in-person) at an average cost of $150,000 each, and two focus groups, automated data collections or lab experiments at an average cost of $20,000 each, total contract costs could be $640,000 per year.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 15, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–6855 Filed 3–24–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request

that the Office of Management and Budget (OMB) approve the proposed information collection project: "Connecting Primary Care Practices with Hard-to-Reach Adolescent Populations." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on January 13th, 2011 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by April 25, 2011.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (*attention:* AHRQ's desk officer) or by e-mail at *0IRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Connecting Primary Care Practices With Hard-to-Reach Adolescent Populations

The overall goal of this exploratory project is to improve the quality of adolescent health care. The project will address suboptimal adolescent care with respect to health risk behaviors, which can have serious health consequences. In particular, failure to address health risk behaviors among adolescents (*e.g.,* smoking, substance abuse, poor diets, physical inactivity, and high-risk sexual behavior) contributes significantly to increased morbidity and mortality. Adolescents (11–17 years of age) constitute 17% of the population of the U.S., but they are responsible for only 7% of medical office visits. As a result, primary care providers have relatively less opportunity to evaluate and counsel adolescents in their offices than most other patients. Even when adolescents receive routine health care, open communication with their health care providers may be problematic. A national survey found that the majority of adolescent boys and girls in the U.S. report at least 1 of 8 potential health risks, but most (63%) had not spoken to their doctor about any of these (Klein & Wilson, 2002). Improved engagement and communication between adolescents and their primary care providers could increase the likelihood that effective preventive services and health care are provided. It could also improve the efficiency of health care services for adolescents, in terms of appointments kept and adherence to recommended screening or treatment recommendations.

Technological interventions to improve care may be particularly appropriate for adolescents, since they are typically the early adopters of new technology (Skinner, Biscope, Poland, & Goldberg, 2003). Use of in-office electronic screeners before appointments has proven useful (Olson, Gaffney, Lee, &Starr 2008; Salerno, 2008; Yi, Martyn, Salerno, & Darling-Fisher,). Outside of the office, youth have increasingly turned to the internet for health-related information, and have also rapidly adopted mobile technology (Lenhart. Line, Campbell. & Purcell, 2010) and social media (Lenhart, Purcell, Smith& Zickuhr, 2010). Health plans (*e.g.,* Kaiser Permanente) and practices (Hawn, 2009) have conducted early work in applying patient-centered web and mobile technologies. These projects have included interventions to decrease patient no-show rates, increase the use of sunscreen, and engage adolescents in diabetes management. Much work remains to be done, however, in understanding how primary care practices can best embrace advances in communications and information technology to improve health outcomes for adolescent patients.

This project has the following goals:

(1) Explore the benefits of supplementing an electronic in-office pre-visit screener with a set of Web technologies for adolescent outreach and engagement outside of office visits.

a. The Rapid Assessment for Adolescent Preventive Services© (RAAPS), as described below, will be used for in-office pre-visit screening.

b. The Web technologies will include (i) a Web page for more static content such as information about practices and health-related commentary from practice clinicians and staff, (ii) a Facebook page for social interaction about health topics including topical content that will engage adolescents in conversations about general, not personal, health behaviors and encouraging youth to discuss these issues with their primary care practitioners at clinic visits, and (iii) a Twitter site that will allow youth to use mobile phones with text messaging to subscribe to Facebook posts.

(2) Increase adolescent visits to primary care and identification of health risks during visits.

(3) Promote healthier behavior in four domains: (1) Diet, (2) physical activity, (3) substance abuse (smoking, alcohol, and use of other recreational drugs), and (4) sexual health.

(4) Develop a manual of best practices for these components in primary care.

This study is being conducted by AHRQ through its contractor, State Network of Colorado Ambulatory Practices and Partners (SNOCAP–USA), a practice-based research network (PBRN) based at the University of Colorado Denver, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to clinical practice, including primary care and practice-oriented research. 42 U.S.C. 299a(a)(1) and (4).

Method of Collection

This project will be conducted in four primary care practice sites that have a substantial number of adolescent patients. The following activities and data collections will be implemented:

(1) RAAPS questionnaire. Practices will use the 21-item RAAPS questionnaire for in-office pre-visit screening. RAAPS was developed by the University of Michigan Regional Alliance for Healthy Schools to elicit information about risky adolescent behaviors that should be addressed, but often are missed, in primary care. It is available in both paper and online forms; the latter will be used in this project. The primary purpose of the RAAPS questionnaire is to improve clinical recognition of risky behaviors so that personal counseling may be provided.

(2) Process measures for web technologies. For each of the web technologies used (the web page, Facebook page, and Twitter site), data on the number of unique visitors, the frequency of their visits, and their activities (e.g. whether they create a new post or "like" postings) will be obtained by the research team. These data will not include personally identifiable information (e.g. the user's username, birth date, IP address, etc.). OMB clearance is not required for this data collection.

(3) Extraction of medical record data. Staff members at each practice will use their clinical information systems to extract medical record data for use by the research team. Data to be extracted

consist of (a) Contact information for patients seen in the 18 months prior to the start date for implementation of RAAPS and the web technologies. This is the sample frame for the adolescent behavior and communication survey. These data will be used by the project staff to prepare the recruitment mailings. (b) Clinic notes for adolescents seen in the 12 months prior to implementation start date and for adolescents seen in the 12 months following the implementation start date. Clinic notes will be made accessible either by pulling paper charts or printing notes from electronic medical records. The notes will be reviewed and abstracted by the research team to assess whether the intervention had the intended effect of increasing adolescent visits to primary care and the identification of potential health risks during visits.

(4) Consent-assent form. This is used to obtain consent from the parent or guardian and assent from the adolescent to participate in the adolescent behavior and communication survey.

(5) Adolescent behavior and communication survey. A questionnaire (by mail, with an online option) will be administered twice to adolescent patients for whom consent-assent has been obtained: Once at baseline and again six months after the intervention. The purpose of this survey is to measure the adolescent's level of comfort with discussing their health with their clinician and their level of satisfaction with their medical care, and to see how this changes after the intervention.

(6) Post-visit satisfaction survey. Practices will provide adolescents with a brief, post-card sized anonymous questionnaire at every office visit during the study period. The purpose is to assess the perceived utility of the RAAPS questionnaire, and whether the visit was related to the project's web technologies.

(7) Adolescent focus groups. Eight adolescents (two from each practice) will provide feedback on the web page, Facebook, and Twitter pages. There will be one in-person group meeting pre-implementation, followed by a series of 3 additional asynchronous group discussions conducted via the web at three-month intervals. These provide a process for user-centered design and refinement of the of web technologies.

(8) Adolescent "think-aloud" sessions. These sessions, which will be conducted near the end of the study period, will involve a set of eight adolescent patients (two from each practice) that did not participate in the focus groups. Subjects will come to the practice for individual sessions in which they will be asked to say aloud what they are thinking about the web technologies as they navigate them as they typically would. The purpose is to assess the perceived utility of the components of the web, Facebook, and Twitter pages.

(9) Clinician semi-structured interviews. At each site, individual interviews will be conducted with two clinicians (eight clinicians total). The purpose is to assess clinician perceptions of the effects of the RAAPS questionnaire and the web technologies on the clinical encounter and the care they provide.

(10) Administrator-staff semi-structured interviews. At each site, semi-structured interviews will be conducted with the practice manager and a front-desk staff member. The purpose is to assess the effect of the interventions on the check in process and other business processes.

(11) Semi-structured interviews for the draft manual. The draft manual of best practices in primary care for adoption of web and assessment technologies (such as the RAAPS questionnaire) developed by the research team will be sent to the practice manager and the practice director (lead clinician) of each site. Their feedback will be solicited by telephone roughly two weeks later. This "member checking" enhances the validity of the manual's conclusions and recommendations.

The results from this exploratory project will be used to inform development of a manual to assist primary care practices in adopting interventions to improve the effectiveness of their outreach to and interactions with adolescent patients. In addition, information collected in the RAAPS questionnaire may be used by clinicians to improve clinical care.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. Among the 776 adolescent patients across the 4 participating practices, 310 are expected to complete the RAAPS questionnaire, which takes about 12 minutes to complete, at each office visit (on average there will be an estimated 1.25 office visits per patient). Practice staff members will perform the extraction of medical record data pre-implementation, and again post-implementation, for 50 patients. This task is estimated to require 4 hours per practice (slightly less than 5 minutes per patient record).

The consent-assent form for participation in the adolescent behavior and communication survey will be sent to the homes of all adolescents in the practice's panels. The estimated average time for reading and responding to the form is 15 minutes. The adolescent behavior and communication survey will be completed twice, pre and post intervention, by 186 adolescent patients and requires 15 minutes to complete. The post-visit satisfaction survey will be completed by each of the 310 participating adolescent patients after each office visit and will take 1 minute to complete.

A series of four focus groups will be held with 8 adolescent patients over the course of the study period with each session lasting about 1.5 hours. In addition to the focus groups one "think aloud" session will be held with a group of 8 adolescent patients and will also take 1.5 hours.

Feedback from the practice staff and the clinicians will be obtained through 3 different semi-structured interviews. Two staff members from each of the 4 practices will participate in these interviews. The clinician and administrator-staff semi-structured interviews will each last 30 minutes. Semi-structured interviews for the draft manual will require about one hour total (30 minutes to review the manual and 30 minutes to participate in the interview). The total annualized burden is estimated to be 479 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total annual cost burden is estimated to be $7,980.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Activity/data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
RAAPS questionnaire	310	1.25	12/60	78
Extraction of medical record data	4	2	4	32

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Activity/data collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Consent-assent form	776	1	15/60	194
Adolescent behavior and communication survey	186	2	15/60	93
Post-visit satisfaction survey	310	1.25	1/60	6
Adolescent focus groups	8	4	1.5	48
Adolescent "think-aloud" sessions	8	1	1.5	12
Clinician semi-structured interviews	4	2	30/60	4
Administrator-staff semi-structured interviews	4	2	30/60	4
Semi-structured interviews for the draft manual	4	2	1	8
Total	1,614	na	na	479

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Activity/data collection cost	Number of respondents	Total burden hours	Average hourly wage rate [1]	Total burden
RAAPS questionnaire	310	78	[2] $9.01	$703
Extraction of medical record data	4	32	[3] 18.15	581
Consent-assent form	776	194	[4] 22.11	4,289
Adolescent behavior and communication survey	186	93	[2] 9.01	838
Post-visit satisfaction survey	310	6	[2] 9.01	54
Adolescent focus groups	8	48	[2] 9.01	432
Adolescent "think-aloud" sessions	8	12	[2] 9.01	108
Clinician semi-structured interviews	4	4	[5] 84.53	338
Administrator-staff semi-structured interviews	4	4	[6] 29.63	119
Semi-structured interviews for the draft manual	4	8	[7] 64.75	518
Total	1,614	479	na	7,980

[1] Mean hourly and wage costs for Colorado were derived from the Bureau of Labor and Statistics National Compensation Survey for May 2009 (*http://www.bls.gov/oes/current/oes_co.htm*).
[2] Hourly rate for an entry level worker (occupation code 35–0000) estimates the cost of time for adolescents, although many will not be employed.
[3] Hourly rate for medical records and health information technician (29–2071).
[3] Hourly rate for medical records and health information technician (29–2071).
[4] Hourly rate for the mean for all occupations (00–0000) estimates the cost of time for the parent or guardian of the adolescent.
[5] Average of hourly rates for a family medicine practitioner (29–1062) and a general internist (29–1063).
[6] Average of (1) the hourly rate for a medical and health services manager (11–9111) and (2) the average of the hourly rates for a receptionist (43–4171) and a medical assistant (31–9092).
[7] Average of (1) the hourly rate for a medical and health services manager (11–9110) and (2) the average of the hourly rates for a family medicine practitioner (29–1062) and a general internist (29–1063).

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the Federal Government for conducting this research. These estimates include the costs associated with the project such as the preparation of survey administration procedures, labor costs, administrative expenses, costs associated with copying, postage, and telephone expenses, data management and analysis, and preparation of final reports. The annualized and total costs are identical since the data collection period will last for one year. The total cost is estimated to be $436,524.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$72,364	$72,364
Data Collection Activities	48,904	48,904
Data Processing and Analysis	73,937	73 937
Publication of Results	21,890	21,890
Project Management	75,733	75,733
Overhead	143,696	143,696
Total	436,524	436,524

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQs information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information

dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 15, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–6857 Filed 3–24–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Using Nursing Home Antibiograms to Improve Antibiotic Prescribing and Delivery." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by May 24, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Using Nursing Home Antibiograms To Improve Antibiotic Prescribing and Delivery

Overuse and inappropriate use of antibiotics, particularly broad-spectrum antibiotics, is recognized as a serious problem in nursing homes (NHs). The adverse consequences of inappropriate prescribing practices including drug reactions/interactions, secondary complications, and the emergence of multi-drug resistant organisms, have become more common. For example, in one point-prevalence survey of 117 NH residents, 43 percent were culture-positive for one or more antimicrobial-resistant pathogens, including methicillin-resistant staphylococcus aureas (24 percent), extended-spectrum ß-lactamase-producing klebsiella pneumoniae (18 percent) or Escherichia coli (15 percent), and vancomycin-resistant enterococci. Inappropriate overprescribing and overuse of broad-spectrum antibiotics, when narrower spectrum drugs would suffice, are believed to be important contributors to this problem.

Physicians typically begin antibiotics for suspected infections in NH residents without waiting for bacteriology laboratory culture results. If there is a clinical failure (*e.g.,* patient does not improve), the physician may request a bacteriology laboratory test, but will often try a second antibiotic without waiting for culture confirmation. If a NH resident is deteriorating, many NHs do not try a second antibiotic but will instead transfer the patient to a hospital emergency department (ED). In the ED, physicians must make quick decisions about whether to continue the first antibiotic prescribed in the NH or start another, again often without culture results.

NH patients are transferred to EDs for all sorts of medical reasons, including but not limited to infections. When NH patients arrive at an ED, physicians may identify a urinary tract, respiratory, or other infection that was not the primary reason for the ED visit. Thus, patients may not leave the NH with a suspected bacterial infection or taking any antibiotics, but an infection is suspected in the ED and the first antibiotic is prescribed there.

As a result of the above complexities, NHs are increasingly recognized as reservoirs of antibiotic-resistant bacteria. Antibiograms aggregate information for an entire institution over a period of several months or a year. They display the organisms present in clinical specimens sent for laboratory testing, and the susceptibility of each organisms to an array of antibiotics. Antibiograms are routinely prepared by hospital laboratories but are not routine in the NH setting. The culmination of this project will be a NH Antibiogram toolkit so that NHs can create facility-specific antibiograms that are cost-effective and helpful to physicians who must make antibiotic prescription decisions without bacteriology laboratory test results, for patients in NHs, and for patients who are transferred from the NH to the ED. Outcomes of interest for antibiograms include reduced reliance on broad-spectrum antibiotics as initial therapy, and fewer clinical failures of antibiotics that are first prescribed. The development of a toolkit will be the first step in this process; future studies are required to test the toolkit and, subsequently, the effectiveness of NH antibiograms.

The objectives of the study are to:

1. Develop a standardized method for determining antibiotic susceptibility patterns and developing NH-specific antibiograms;
2. Extract preliminary data from NH facilities of various sizes and types to guide the development of the draft toolkit; and
3. Develop a draft toolkit to guide a wide variety of sizes and types of NHs in developing and sharing antibiogram information with prescribing providers (i.e., physicians and physician extenders) and EDs.

Three NHs and one ED will participate in this study, which will be conducted in two phases. The first phase will include one small NH and one ED and is intended to test the data collection instruments and to draft the initial toolkit, including the creation of a NH specific antibiogram. The second phase will expand the study by adding two larger NHs, while retaining the same NH and ED as in the first phase and is intended to further test the data collection instruments and refine the draft toolkit. Each phase will use the same methods and data collections.

This study is being conducted by the Agency for Healthcare Research and Quality through its contractors, Abt Associates and the Brigham and Women's Hospital ED, pursuant to the Agency for Healthcare Research and Quality's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare

services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

The following data collection activities will be implemented to achieve the objectives of this project:

(1) Medical Records Extraction. Medical record data related to antibiotic use will be extracted by the research team at the three participating NHs and one ED. The team will extract the necessary data from the infection control log and request access to additional records (*e.g.,* medication log and/or patient medical record) as needed to collect relevant data. Two months of retrospective NH and ED medical records will be reviewed prior to the implementation period, on a monthly basis during implementation, and for one month post-implementation. In the ED medical records will be extracted for only those NH residents who have been transferred to the ED from one of the participating NHs. The pre-implementation data will be compared to the data collected during implementation and post-implementation to see if the use of the antibiogram report had an effect on antibiotic use at the participating facilities. It is unlikely, but possible, that NH staff may be asked to assist the research team with this task in the two larger, Expansion Phase Two sites; however, ED staff will not. Medical record extraction during Phase One will occur prior to OMB clearance and will be limited to 9 or fewer records.

(2) Provider Pre-Implementation and Post-Implementation Questionnaires. These questionnaires will be completed by providers at both the NHs and ED one month prior to implementation and again in the final month of implementation. NH and ED questions differ somewhat, as do pre- and post-implementation surveys. In addition to basic background questions such as the providers' title, type of residency and length of practice, questions related to their use and opinion of antibiograms are included. The post-implementation questionnaire contains three additional questions related to the use of antibiograms as well as a series of vignettes administered before and after the presentation of an antibiogram report. These questionnaires will assess change in the providers' use and opinion of antibiograms.

(3) Nurse Pre/Post-Implementation Questionnaire. This questionnaire will be administered one month prior to implementation and again in the final month of implementation. In addition to basic background questions such as the nurses' title, position at the NH and length of employment, questions related to their use and opinion of antibiograms are included. The same set of questions is asked at each time period. This questionnaire will measure any change in the nurses' use and opinion of antibiograms.

(4) NH Leadership Post-Implementation Questionnaire. This questionnaire will be completed by the NH administrator or the director of nursing in the final month of the implementation. In addition to basic background questions such as their title, position at the NH and length of employment, questions are asked about the impact the antibiograms had in terms of antibiotic use, the cost associated with their use and whether they intend to continue using them once the study has been completed.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. Although medical records extraction using the NH and ED Data Extraction Tools will occur at the NHs and ED, the potential information collection burden will be limited to staff at each of the Expansion Phase 2 NHs. Medical record data extraction will occur monthly for 7 months at the two Expansion Phase Two NHs and may require 15 minutes assistance from the NH staff.

The NH Provider Pre-Implementation Questionnaire will be completed by 10 providers at each of the two Expansion Phase Two NHs and will take about 10 minutes to complete. The NH Provider Post-Implementation Questionnaire will be completed by three providers in the Initial Phase One NH and 10 providers at each of the two Expansion Phase Two NHs (23 total or an average of 7.67 providers per NH as shown in Exhibit 1) and takes 15 minutes to complete. The ED Provider Post-Implementation Questionnaire will be completed by 30 providers in the ED and requires 15 minutes to complete. The Nurse Pre/Post Implementation Questionnaire will be completed pre-implementation by approximately 25 nurses at each of the two Expansion Phase Two NHs and again post-implementation by 25 nurses at each of the 3 participating NHs (125 total or an average of 41.67 nurses per NH as shown in Exhibit 1). The Nurse Pre/Post-Implementation Questionnaire is estimated to take 5 minutes to complete. The NH Leadership Post-Implementation Questionnaire will be completed by one NH administrator or director of nursing at each of the three participating NHs and will require 10 minutes to complete.

The total annualized burden hours are estimated to be 32 hours.

Exhibit 2 shows the estimated annual cost burden to the respondent, based on their time to participate in this research. The annual cost burden is estimated to be $1,921.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of facilities	Number of responses per facility	Hours per response	Total burden hours
Medical Records Extraction	2	7	15/60	4
NH Provider Pre-Implementation Questionnaire	2	10	10/60	3
NH Provider Post-Implementation Questionnaire	3	7.67	15/60	6
ED Physician Post-implementation Questionnaire	1	30	15/60	8
Nurse Pre/Post Implementation Questionnaire	3	41.67	5/60	10
NH Leadership Post-Implementation Questionnaire	3	1	10/60	1
Total	14	n/a	n/a	32

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of facilities	Total burden hours	Average hourly wage rate *	Total cost burden
Medical Records Extraction	2	4	$31.99	$128
NH Provider Pre-Implementation Questionnaire	2	3	83.59	251
NH Provider Post-Implementation Questionnaire	3	6	83.59	502
ED Physician Post-implementation Questionnaire	1	8	83.59	669
Nurse Pre/Post Implementation Questionnaire	5	10	31.99	320
NH Leadership Post-Implementation Questionnaire	3	1	51.45	511
Total	14	32	n/a	1,921

* Based upon the mean of the average wages, National Occupational Employment and Wage Estimates, U.S. Department of Labor, Bureau of Labor Statistics. May 2009. Hourly mean wage for registered nurse ($31.99), physician ($83.59), and NH administrator ($51.45).

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost for conducting this research. The total budget for this two year study is $458,812.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total	Annualized cost
Project Administration	$60, 511	$30,256
Initial Antibiogram Development and Implementation	47,618	23,809
Expansion of Antibiogram Development and Implementation	36,948	18,474
Toolkit—Development and Refinement	92,688	46,344
Evaluation	153,978	76,989
Final Report and Dissemination	67,071	33,536
Total	458,812	229,406

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: March 15, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–6848 Filed 3–24–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting for Software Developers on the Technical Specifications for Common Formats for Patient Safety Data Collection and Event Reporting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

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. 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. In order to support the Common Formats, AHRQ has provided technical specifications to promote standardization by ensuring that data collected by PSOs and other entities are clinically and electronically comparable. More information on the Common Formats, including the technical specifications, can be obtained through AHRQ's PSO Web site: *http://www.PSO.AHRQ.GOV/index.html.*

The purpose of this notice is to announce a meeting to discuss the technical specifications, including the Hospital Common Formats technical specifications and the Skilled Nursing Facility Common Formats. This meeting is designed as an interactive forum where PSOs and software developers can provide input on these technical

specifications for the Common Formats. AHRQ especially requests input from those entities which have used AHRQ's technical specifications and implemented, or plan to implement, the formats electronically.

DATES: The meeting will be held from 10 a.m. to 3:30 p.m. on May 11, 2011.

ADDRESSES: The meeting will be held at the Hilton Washington DC/Rockville Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Susan Grinder, 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; TTY (local): (301) 427–1130; *E-mail: PSO@AHRQ.HHS.GOV.*

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Disability Management at (301) 827–4840, no later than April 28, 2011.

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, AHRQ develops and maintains 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. Most recently, AHRQ released the beta version of the Skilled Nursing Facilities format for reporting of patient safety events in skilled nursing facilities as announced in the **Federal Register** on March 7, 2011: 76 FR 12358–12359.

This meeting will focus on discussion of the technical specifications, which provide direction to software developers that plan to implement the Common Formats electronically. The technical specifications are a critical component that allow for the aggregation of patient safety event data by standardizing the patient safety event information collected and specifying standard rules for data collection, as well as providing guidance for how and when to create data elements, their valid values, and conditional and go-to logic for the data elements. In addition to standardizing the information collected, they specify the data submission file format.

The technical specifications consist of the following:

- Data dictionary—defines data elements and their attributes (data element name, answer values, field length, guide for use, *etc.*) included in Common Formats;
- Clinical document architecture (CDA) implementation guide—provides instructions for developing a Health Level Seven (HL7) CDA Extensible Markup Language (XML) file to transmit the Common Formats Patient Safety data from the PSO to the PPC using the Common Formats;
- Validation rules and errors document-specifies and defines the validation rules that will be applied to the Common Formats data elements submitted to the PPC;
- Common Formats flow charts—diagrams the valid paths to complete generic and event specific formats (a complete event report);
- Local specifications—provides specifications for processing, linking and reporting on events and details specifications for reports; and
- Metadata registry—includes descriptive facts about information contained in the data dictionary to illustrate how such data corresponds with similar data elements used by other Federal agencies and standards development organizations [*e.g.,* HL–7, International Standards Organization (ISO)].

Agenda, Registration and Other Information About the Meeting

On Wednesday, May 11, 2011, the meeting will convene at 10 a.m. with an overview of the Common Formats, including the Hospital Common Formats Version 1.1 technical specifications, the next steps for the Skilled Nursing Facility Common Formats, and Common Formats version issues. Next, AHRQ staff and contractors who developed the formats will provide an update on the report specifications scheduled to be released in March 2011. Finally, the meeting will focus on data submission both by PSOs and by vendors on behalf of a PSO. Throughout the meeting there will be interactive discussion to allow meeting participants not only to provide input, but also to respond to the input provided by others. A more specific proposed agenda will be posted before the meeting at *http://guest.cvent.com/d/wdqbt8/6X.*

AHRQ requests that interested persons register with the PSO Privacy Protection Center (PSO PPC) on the Internet at *http://GUEST.cvent.com/d/wdgbt8/4W* to participate in the meeting. The contact at the PSO PPC is Rhonda Davis who can be reached by telephone at (866) 571–7712 and by e-mail at *support@psoppc.ORG.* Additional logistical information for the meeting is also available from the PSO PPC. The meeting space will accommodate approximately 144 participants. Interested persons are encouraged to register as soon as possible for the meeting. Non-registered individuals will be able to attend the meeting in person if space is available.

We invite review of the technical specifications for Common Formats prior to the meeting. The formats can be accessed through AHRQ's PSO Web site at *http://www.pso.AHRQ.GOV/formats/commonfmt.htm.* AHRQ is committed to

continuing refinement of the Common Formats. AHRQ welcomes questions from prospective meeting participants and interested individuals on the technical specifications for Common Formats. These questions should be e-mailed to *support@psoppc.ORG* no later than April 27, 2011. AHRQ will use the input received at this meeting as we continue to update and refine the Common Formats.

A summary of the meeting will be provided upon request. If you are unable to participate in the meeting and would like a copy of the summary, please send an e-mail to *support@psoppc.ORG* and it will be sent as soon as it is available after the meeting.

Dated: March 15, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–6852 Filed 3–24–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned committee:

Time and Date: 11 a.m.–2 p.m., April 20, 2011.

Place: Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 and the pass code is 9933701.

Status: Open to the public, but without a public comment period.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines, which have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, most recently, August 3, 2009, and will expire on August 3, 2011.

Purpose: This Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The agenda for the conference call includes: NIOSH 10-Year Review of its Division of Compensation Analysis and Support (DCAS) Program; Subcommittee and Work Group Updates; DCAS SEC Petition Evaluations Update for the May 2011 Advisory Board Meeting; and Board Correspondence.

The agenda is subject to change as priorities dictate.

Because there is not a public comment period, written comments may be submitted. Any written comments received will be included in the official record of the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore M. Katz, M.P.A., Executive Secretary, NIOSH, CDC, 1600 Clifton Rd., NE., Mailstop: E–20, Atlanta, GA 30333, Telephone (513) 533–6800, Toll Free 1–800–CDC–INFO, E-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: March 18, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–7076 Filed 3–24–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 9 a.m.–5 p.m., April 18, 2011.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859) 334–4611, Fax (859) 334–4619.

Status: Open to the public, but without a public comment period. To access by conference call dial the following information 1 (866) 659–0537, Participant Pass Code 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood

that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters to be Discussed: The agenda for the Subcommittee meeting includes: Selection of individual radiation dose reconstruction cases to be considered for review by the Procedures Subcommittee to evaluate the implementation of the Program Evaluation Report: OCAS–PER–012—Evaluation of Highly Insoluble Plutonium Compounds; discussion of dose reconstruction cases under review (sets 7–9); OCAS dose reconstruction quality management and assurance activities.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta GA 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, E-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: March 21, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–7075 Filed 3–24–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–1583–N]

Medicare Program; Solicitation of Two Nominations to the Advisory Panel on Ambulatory Payment Classification Groups

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice solicits nominations of two new members to the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel). There will be two vacancies on the Panel as of September 30, 2011.

The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (DHHS), and the Administrator of the Centers for Medicare & Medicaid Services (CMS), concerning the clinical integrity of the APC groups and their associated weights.

The Secretary rechartered the Panel in 2010 for a 2-year period effective through November 21, 2012.

DATES: *Submission of Nominations:* We will consider nominations if they are received no later than 5 p.m. (e.s.t.) May 24, 2011.

ADDRESSES: Please mail or hand deliver nominations to the following address: Centers for Medicare & Medicaid Services; *Attn:* Paula Smith, Advisory Panel on APC Groups; Center for Medicare, Hospital & Ambulatory Policy Group, Division of Outpatient Care; 7500 Security Boulevard, Mail Stop C4–05–17; Baltimore, MD 21244–1850.

Web site: For additional information on the APC Panel and updates to the Panel's activities, we refer readers to view our Web site at the following: *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage.* (Use control + click the mouse in order to access the previous URL.) (**Note:** There is an UNDERSCORE after FACA/05_; there is no space.)

FOR FURTHER INFORMATION CONTACT:

Contact: Persons wishing to nominate individuals to serve on the Panel or to obtain further information may also contact Paula Smith at the following e-mail address: *APCPanel@cms.hhs.gov* or call 410–786–3985.

Advisory Committees' Information Lines: You may also refer to the CMS Federal Advisory Committee Hotlines at 1–877–449–5659 (toll-free) or 410–786–9379 (local) for additional information.

News Media: Representatives should contact the CMS Press Office at 202–690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) to consult with an expert outside advisory panel regarding the clinical integrity of the APC groups and relative payment weights that are components of the Medicare Hospital Outpatient Prospective Payment System (OPPS).

The Charter requires that the Panel meet up to three times annually. CMS considers the technical advice provided by the Panel as we prepare the proposed and final rules to update the OPPS for the next calendar year.

The Panel may consist of a chair and up to 15 members who are full-time employees of hospitals, hospital systems, or other Medicare providers that are subject to the OPPS. (For purposes of the Panel, consultants or independent contractors are not considered to be full-time employees in these organizations.)

The current Panel members are as follows: (**Note:** The asterisk [*] indicates the Panel members whose terms end on September 30, 2011.)

- E. L. Hambrick, M.D., J.D., Chair, a CMS Medical Officer
- Ruth L. Bush, M.D., M.P.H.
- Kari S. Cornicelli, C.P.A., FHFMA
- Dawn L. Francis, M.D., M.H.S.
- Kathleen Graham, R.N., M.S.H.A.
- Patrick A. Grusenmeyer, Sc.D., FACHE *
- David A. Halsey, M.D.
- Brain D. Kavanagh, M.D., M.P.H.
- Judith T. Kelly, B.S.H.A., RHIT, RHIA, CCS
- Scott Manaker, M.D., PhD
- John Marshall, CRA, RCC, RT
- Agatha L. Nolan, D.Ph., M.S., FASHP *
- Randall A. Oyer, M.D.
- Daniel J. Pothen, M.S., RHIA, CHPS, CPHIMS, CCS, CCS–P, CHC
- Gregory J. Przbylski, M.D.
- Neville B. Sarkari, M.D., FACP

Panel members serve without compensation, according to an advance written agreement; however, for the meetings, CMS reimburses travel, meals, lodging, and related expenses in accordance with standard Government travel regulations. CMS has a special interest in attempting to ensure, while taking into account the nominee pool, that the Panel is diverse in all respects of the following: Geography; rural or urban practice; race, ethnicity, sex, and disability; medical or technical specialty; and type of hospital, hospital health system, or other Medicare provider subject to the OPPS.

Based upon either self-nominations or nominations submitted by providers or interested organizations, the Secretary, or his or her designee, appoints new members to the Panel from among those candidates determined to have the required expertise. New appointments are made in a manner that ensures a balanced membership under the guidelines of the Federal Advisory Committee Act.

II. Criteria for Nominees

The Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. Each Panel member must

be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS. All members must have technical expertise to enable them to participate fully in the Panel's work. Such expertise encompasses hospital payment systems; hospital medical care delivery systems; provider billing systems; APC groups; Current Procedural Terminology codes; and alpha-numeric Health Care Common Procedure Coding System codes; and the use of, and payment for, drugs, medical devices, and other services in the outpatient setting, as well as other forms of relevant expertise.

It is not necessary for a nominee to possess expertise in all of the areas listed, but each must have a minimum of 5 years experience and currently have full-time employment in his or her area of expertise. Generally, members of the Panel serve overlapping terms up to 4 years, based on the needs of the Panel and contingent upon the rechartering of the Panel.

Any interested person or organization may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include the following:

- Letter of Nomination.
- Curriculum Vita of the nominee.
- Written statement from the nominee that the nominee is willing to serve on the Panel under the conditions described in this notice and further specified in the Charter.

III. Copies of the Charter

To obtain a copy of the Panel's Charter, submit a written request to Paula Smith at the address provided in the **ADDRESSES** section or by e-mail at APCPanel@cms.hhs.gov, or by telephone at 410–786–3985.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 10, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–6811 Filed 3–24–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier CMS–10373]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR 1320(a)(2)(ii). This is necessary to ensure compliance with an initiative of the Administration.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medical Loss Ratio Quarterly Reporting; *Use:* Under Section 2718 of the Affordable Care Act and implementing regulations at 45 CFR part 158 (75 FR 74865, December 1, 2010), a health insurance issuer (issuer) offering group or individual health insurance coverage must submit a report to the Secretary concerning the amount the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes and licensing or regulatory fees, and the amount of earned premium. An issuer must provide an annual rebate to enrollees if the amount it spends on certain costs compared to its premium revenue (excluding Federal and States taxes and licensing or regulatory fees) does not meet a certain ratio, referred to as the medical loss ratio (MLR). An interim final rule (IFR) implementing the MLR was published on December 1, 2010 (75 FR 74865), which added part 158 to Title 45 of the Code of Federal Regulations. The IFR is effective January 1, 2011. Issuers are required to submit annual MLR reporting data for each large group market, small group market, and individual market within each State in which the issuer conducts business. For policies that have a total annual limit of $250,000 or less (sometimes referred to as "mini-med plans") and for policies that primarily cover employees working outside the United States (referred to as "expatriate plans"), the IFR applies a special circumstance adjustment to the MLR data for the 2011 MLR reporting year. In order to evaluate the appropriateness of this special circumstance adjustment for years 2012 and beyond, issuers that provide such policies are required to submit quarterly MLR data to the Secretary for the 2011 MLR reporting year. *Form Number:* CMS–10373; *Frequency:* Quarterly submissions for each respondent; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 75; *Number of Responses:* 1,125; *Total Annual Hours:* 70,200. (For policy questions regarding this collection, contact Carol Jimenez at (301) 492–4109. For all other issues call (410) 786–1326.)

CMS is requesting OMB review and approval of this collection by *May 1, 2011,* with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by *April 25, 2011.*

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these

information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by April 25, 2011.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. *By Facsimile or E-mail to OMB.* OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: March 18, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–7106 Filed 3–24–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier CMS–370, CMS–377, CMS–378; CMS–10145, CMS–10362, CMS–10384, CMS–10342 and CMS–10338]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Titles of Information Collection:* (CMS–370) Health Insurance Benefits Agreement, (CMS–377) ASC Request for Certification or Update of Certification Information in the Medicare Program, and (CMS–378) Ambulatory Surgical Center (ASC) Survey Report Form; *Use:* CMS–370 has not been revised and will continue to be used to establish eligibility for payment under Title XVIII of the Social Security Act (the "Act"). As revised, CMS–377 will be used to collect facility-specific characteristics that facilitate CMS' oversight of ASCs. The data also enables CMS to respond to inquiries from the Congress, GAO, and the OIG concerning the characteristics of Medicare-participating ASCs. The data base that supports survey and certification activities will be revised to reflect changes in the data fields on this revised form, such as the data on the types of surgical procedures performed in the ASC. CMS–378 will be discontinued since it duplicates information collected by other means; *Form Numbers:* CMS–370, –377 and –378 (OCN: 0938–0266); *Frequency:* Occasionally (initially an then every three years); *Affected Public:* Private Sector: Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 7,213; *Total Annual Responses:* 1,795; *Total Annual Hours:* 648. (For policy questions regarding this collection contact Gail Vong at 410–786–0787. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare Part B Drug and Biological Competitive Acquisition Program (CAP) and Supporting Regulations in 42 CFR Sections 414.906, 414.908, 414.910, 414.914, 414.916, and 414.917; *Use:* Section 303(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) provides an alternative payment methodology for Part B covered drugs that are not paid on a cost or prospective payment basis. In particular, Section 303(d) of the MMA amends Title XVIII of the Social Security Act by adding a new section 1847B, which establishes a competitive acquisition program for the acquisition of and payment for Part B covered drugs and biologicals furnished on or after January 1, 2006. Since its inception, additional legislation has augmented the CAP. Section 108 of the Medicare Improvements and Extension Act under Division B, Title I of the Tax Relief Health Care Act of 2006 (MIEA–TRHCA) amended Section 1847b(a)(3) of the Social Security Act and requires that CAP implement a post payment review process. This procedure is done to assure that payment is made for a drug or biological under this section only if the drug or biological has been administered to a beneficiary. *Form Number:* CMS–10145 (OCN: 0938–0945); *Frequency:* Weekly, quarterly and occasionally; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 3000; *Total Annual Responses:* 156,020; *Total Annual Hours:* 31,208.

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Autism Spectrum Disorders (ASD): State of the States Services and Supports for People with ASD; *Use:* The information that is collected in the interviews will be used to communicate additional information about services available to people with ASD and the public policy issues that affect people with ASD to key stakeholder audiences. The format of the report will include data tables from various state programs and narrative about the data being presented based on the interviews with state agency staff. We propose interviewing multiple staff in each state because several state agencies have an impact on services and supports for people with ASD; *Form Number:* CMS–10362 (OCN: 0938–New); *Frequency:* Once; *Affected Public:* State, local, or Tribal Governments; *Number of Respondents:* 459; *Total Annual Responses:* 459; *Total Annual Hours:* 803. (For policy questions regarding this collection contact Ellen Blackwell at 410–786–4498. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Health Insurance Assistance Database; *Use:* In October 2010, the Office of Consumer Support began to take and respond to direct consumer inquiries related to the Affordable Care Act. As of February 15th 2011, CCIIO has received 906 consumer inquiries. Consumer inquiries continue to come in to CCIIO at a rate of 30 to 35 inquiries per week. Starting in January 2011, the HHS Hotline will begin to refer ACA calls to CCIIO. To date, the HHS Hotline receives, on average, 400 calls per month pertaining to ACA.

Accordingly, a system to collect, track and store consumer information is urgently needed in order to accomplish

successful case management to ensure that the information, coverage, and health care needs of consumers are addressed fairly and in a timely fashion. Further, the Team will provide detailed reports on these consumer inquiries with a focus on Affordable Care Act and PHS Act compliance issues. These reports will assist the Office of Oversight in identifying areas where compliance concerns may arise. Reports will be stripped of any information in identifiable form (IIF) and personal health information when written and prepared. Authority for maintenance, collection and disclosures of this information is given under sections 2719, 2723, and 2761 of the Public Health Service Act (PHS Act) and section 1321(c) of the Affordable Care Act.

Analysis of this data reporting will help identity patterns of practice in the insurance marketplaces and uncover suspected patterns of noncompliance. HHS may share program data reports with the Departments of Labor and Treasury, and State regulators. Program data also can offer CCIIO one indication of the effectiveness of State enforcement, affording opportunities to provide technical assistance and support to State insurance regulators and, in extreme cases, inform the need to trigger federal enforcement. *Form Number:* CMS–10384 (OCN: 0938–New); *Frequency:* Occasionally; *Affected Public:* Individuals or households; *Number of Respondents:* 1200; *Number of Responses:* 1,860; *Total Annual Hours:* 195 (For policy questions regarding this collection, contact Paul Tibbits (301) 492–4229. For all other issues call (410) 786–1326.)

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Limits Waiver Online Application Form; *Use:* Under section 2711(a)(2) of the Public Health Service Act, as amended by the Affordable Care Act section 1302(b), The Secretary of Health and Human Services is required to impose restrictions on the dollar value of essential benefits provided by new or existing group health plans or individual policies in the market between September 23, 2010 and January 1, 2014. The interim final regulations published June 28, 2010 (45 CFR § 147.126) give the Secretary the authority to waive these restricted annual limits if compliance would result in a significant increase in premium or significant decrease in access to benefits for those already covered. CMS is in the process of evaluating applications for waivers of annual limits and seeks to publish an updated Microsoft Excel spreadsheet to standardize and simplify the data collection process. Applicants must fill out (1) spreadsheet per application. The spreadsheet is a mandatory component of each waiver application necessary to fulfill the statutory requirements under section 2711(a)(2) of the Public Health Service Act. The information collected includes applicant contact information; information about the annual limit(s) on the overall plan or policy and on essential health benefits (as defined by the Affordable Care Act section 1302(b)); information about plan design such as copayment, coinsurance, and deductibles; financial projections by enrollee tier; and a description of how a significant decrease in access to benefits would result from compliance with section 2711(a)(2) of the Affordable Care Act. This information is required to accurately and objectively assess whether compliance with the restricted annual limits would result in the aforementioned significant increase in premium or significant decrease in access to benefits, on which the grant of a waiver is conditioned in the interim final regulations. The updated spreadsheet contains a more detailed description of what values should be entered into each cell. This description should save applicants time when completing the spreadsheet initially, and it should lessen the need for applicants to go back and correct mistakes after submission. *Form Number:* CMS–10342 (OCN: 0938–1105); *Frequency:* Annually; *Affected Public:* Private Sector; *Number of Respondents:* 4,872; *Number of Responses:* 4,608,372; *Total Annual Hours:* 178,183. (For policy questions regarding this collection, contact Erika Kottenmeier at (301) 492–4170. For all other issues call (410) 786–1326.)

6. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Group Health Plans and Issuers and Individual Market Issuers; *Use:* The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010. As part of the Act, Congress added PHS Act section 2719, which provides rules relating to internal claims and appeals and external review processes. These interim final regulations (IFR) set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the interim final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations. Paragraph (b)(3)(i) requires issuers offering coverage in the individual health insurance market to also comply with the DOL claims procedure regulation as updated by the Secretary of HHS in paragraph (b)(3)(ii) of the interim final regulations for their internal claims and appeals processes.

The DOL claims procedure regulation requires plans to provide every claimant who is denied a claim with a written or electronic notice that contains the specific reasons for denial, a reference to the relevant plan provisions on which the denial is based, a description of any additional information necessary to perfect the claim, and a description of steps to be taken if the participant or beneficiary wishes to appeal the denial. The regulation also requires that any adverse decision upon review be in writing (including electronic means) and include specific reasons for the decision, as well as references to relevant plan provisions. In addition, paragraph (b)(3)(ii)(C) of the interim final regulations adds an additional requirement that non-grandfathered ERISA-covered group health plans provide to the claimant, free of charge, any new or additional evidence considered relied upon, or generated by the plan or issuer in connection with the claim.

Also PHS Act section 2719 and these interim final regulations provide that group health plans and issuers offering group health insurance coverage must comply either with a State external review process or a Federal review process. The regulations provide a basis for determining when plans and issuers must comply with an applicable State external review process and when they must comply with the Federal external review process. *Form Number:* CMS–10338 (OCN: 0938–1099); *Frequency:* Occasionally; *Affected Public:* State, Local, Tribal Governments; *Number of Respondents:* 36,344; *Number of Responses:* 2,762,824; *Total Annual Hours:* 211,216,845. (For policy questions regarding this collection,

contact Tara Oakman at (301) 492–4253. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by May 24, 2011:

1. Electronically. You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. By regular mail. You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 18, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–7104 Filed 3–24–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier CMS–10328 and CMS–10319]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Medicare Self-Referral Disclosure Protocol; *Use:* Section 6409 of the ACA requires the Secretary to establish and post information on the CMS' public Internet Web site concerning a self-referral disclosure protocol (SRDP) that sets forth a process for providers of services and suppliers to self-disclose actual or potential violations of section 1877 of the Act. In addition, section 6409(b) of the ACA gives the Secretary authority to reduce the amounts due and owing for the violations. This information collection request is necessary in order to inform the public of the process and the types of information needed to participate in the SRDP.

The SRDP is a voluntary self-disclosure instrument that will allow providers of services and suppliers to disclose actual or potential violations of section 1877 of the Act. CMS will analyze the disclosed conduct to determine compliance with section 1877 of the Act and the application of the exceptions to the physician self-referral prohibition. In addition, the authority granted to the Secretary under section 6409(b) of the ACA, and subsequently delegated to CMS, may be used to reduce the amount due and owing for violations. *Form Number:* CMS–10328 (OMB#: 0938–1106; *Frequency:* Once; *Affected Public:* Private Sector, Business and other for-profit and not-for-profit institutions; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 1,175. (For policy questions regarding this collection contact Ronke Fabayo at 410–786–4460. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Pre-Existing Condition Insurance Plan Program Solicitation and Contractor's Proposal Package; *Use:* The Department of Health and Human Services (HHS) is requesting a renewal of this package by the Office of Management and Budget (OMB); specifically, HHS is now seeking a three-year approval for this collection. On March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148. Section 1101 of the law establishes a "temporary high risk health insurance pool program" (which has been named the Pre-Existing Condition Insurance Plan, or PCIP) to provide health insurance coverage to currently uninsured individuals with pre-existing conditions. The law authorizes HHS to carry out the program directly or through contracts with states or private, non-profit entities.

This package renewal is requested as a result of a possible transition in administration of the program from a federally-run to a State administered program. A State who originally decided to have HHS administer the program in their State may in the future notify HHS of their desire to administer the Pre-Existing Condition Plan (PCIP) program. PCIP is also referred to as the temporary qualified high risk insurance pool program, as it is called in the Affordable Care Act, but we have adopted the term PCIP to better describe the program and avoid confusion with the existing state high risk pool programs. *Form Number:* CMS–10319 (OMB#: 0938–1085); *Frequency:* Occasionally; *Affected Public:* State governments; *Number of Respondents:* 2; Total *Annual Responses:* 2; *Total Annual Hours:* 2,992. (For policy questions regarding this collection contact Laura Dash at 301–492–4296. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *April 25, 2011.* OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: *March 18, 2011.*

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–7099 Filed 3–24–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier CMS–10320]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320(a)(2)(ii). This is necessary to ensure compliance with an initiative of the Administration.

1. *Type of Information Collection Request:* Reinstatement of Previously Approved Collection; *Title of Information Collection:* Health Care Reform Insurance Web Portal Requirements 45 CFR part 159; *Use:* In accordance with sections 1103 and 10102 of the Affordable Care Act, the U.S. Department of Health and Human Services created a Web site called healthcare.gov to meet these and other provisions of the law, and data collection was conducted for six months based upon an emergency information collection request. The interim final rule published on May 5, 2010 served as the emergency Federal Register Notice for the prior Information Collection Request (ICR). The Office of Management and Budget (OMB) reviewed this ICR under emergency processing and approved the ICR on April 30, 2010. CMS will be submitting a revised ICR to 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.

As previously stated, this information collection is mandated by sections 1103 and 10102 of the Affordable Care Act. Once all of the information is collected from insurance issuers of major medical health insurance hereon referred to as issuers, it will be processed for display at *http://www.healthcare.gov.* The information that is provided will help the general public make educated decisions about private health care insurance options.

CMS is mandating the issuers verify and update their information for a June refresh of the Web site. In the event that an issuer has enhanced or modified its existing plans, created new plans, or deactivated plans, the organization would be required to update the information in the Web portal. States and High Risk Pool administrators are unaffected under this emergency PRA request. *Form Number:* CMS–10320 (OMB#: 0938–1086); *Frequency:* Reporting—Annually/Monthly; *Affected Public:* For Profit Firms, States; *Number of Respondents:* 700; *Total Annual Responses:* 13,050; *Total Annual Hours:* 101,960. (For policy questions regarding this collection contact Beth Liu at 301–492–4268. For all other issues call 410–786–1326.)

CMS is requesting OMB review and approval of this collection by *May 1, 2011,* with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by *April 25, 2011.*

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/regulations/pra* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by April 25, 2011.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. *By Facsimile or E-mail to OMB.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: *March 18, 2011.*

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–7095 Filed 3–24–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–4154–FN]

Medicare and Medicaid Programs; Renewal of Deeming Authority of the National Committee for Quality Assurance for Medicare Advantage Health Maintenance Organizations and Local Preferred Provider Organizations

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the decision to renew the Medicare Advantage Deeming Authority of the National Committee for Quality Assurance (NCQA) for Health

Maintenance Organizations and Preferred Provider Organizations for a term of 4 years. The new term of approval began October 19, 2010, and ends October 18, 2014.

DATES: *Effective Date:* This notice is effective on April 25, 2011.

FOR FURTHER INFORMATION CONTACT: Caroline L. Baker, (410) 786–0116.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a Medicare Advantage (MA) organization that contracts with the Centers for Medicare & Medicaid Services (CMS) provided certain requirements are met under 42 CFR part 422. Part C of Title XVIII of the Social Security Act (the Act), specifies the services that an MA organization must provide and the requirements that the organization must meet to be an MA contractor. Other relevant sections of the Act are Parts A and B of Title XVIII and Part A of Title XI of the Act pertaining to the provision of services by Medicare certified providers and suppliers.

To assure compliance with certain Medicare requirements, an MA organization may chose to become accredited by a CMS approved accrediting organization (AO). By doing so, the MA organization may be "deemed" compliant in one or more of 6 requirements set forth in section 1852(e)(4)(B) of the Act. In order for an AO to be able to "deem" an MA plan as compliant with these MA requirements, the AO must prove to CMS that its standards are at least as stringent as the Medicare requirements. MA organizations that are licensed as health maintenance organizations (HMOs) or preferred provider organizations (PPOs) and are accredited by an approved accrediting organization may receive, at their request, deemed status for CMS requirements in the following 6 MA survey areas: (1) Quality Improvement; (2) Antidiscrimination; (3) Access to Services; (4) Confidentiality and Accuracy of Enrollee Records; (5) Information on Advanced Directives; and (6) Provider Participation Rules. (See 42 CFR 422.156(b).) We note that at this time, deeming does not include the Part D areas of review listed in § 422.156(b).

Organizations that apply for MA deeming authority are generally recognized by the health care industry as entities that accredit HMOs and PPOs. As we specified in § 422.157(b)(2), the term for which an AO may be approved by CMS may not exceed 6 years. For continuing approval, the AO must renew their application with CMS.

II. Approval of Deeming Organizations

Section 1852(e)(4)(C) of the Act provides a statutory timetable to ensure that our review of deeming applications in conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. At the end of the 210 day period, we must publish an approval or denial of the application in the **Federal Register**.

III. Provisions of the Proposed Notice and Response to Comments

On November 29, 2010, we published a proposed notice (75 FR 73087) in the **Federal Register** announcing re-approval of Medicare Advantage Deeming Authority of the National Committee for Quality Assurance (NCQA). In the proposed notice, we detailed our evaluation criteria. As set forth in section 1852(e)(4) of the Act and our regulations at § 422.158, the review and evaluation of NCQA's accreditation program (including its standards and monitoring protocol) were compared to the requirements set forth in part 422 for the MA program.

The review of NCQA's application for approval of MA deeming authority included the following components:

- The types of MA plans that it would review as part of its accreditation process.
- A detailed comparison of the organization's accreditation requirements and standards with the Medicare requirements (for example, a crosswalk).
- Detailed information about the organization's survey process, including—
  - ++ Frequency of surveys and whether surveys are announced or unannounced.
  - ++ Copies of survey forms, and guidelines and instructions to surveyors.
  - ++ Description of the survey review process and the accreditation status decision making process.
  - ++ The procedures used to notify accredited MA organizations of deficiencies and to monitor the correction of those deficiencies.
  - ++ The procedures used to enforce compliance with accreditation requirements.
- Detailed information about the individuals who perform surveys for the accreditation organization, including—
  - ++ The size and composition of accreditation survey teams for each type of plan reviewed as part of the accreditation process.
  - ++ The education and experience requirements surveyors must meet.
  - ++ The content and frequency of the in-service training provided to survey personnel.
  - ++ The evaluation systems used to monitor the performance of individual surveyors and survey teams.
- The organization's policies and practice with respect to the participation, in surveys or in the accreditation decision process by an individual who is professionally or financially affiliated with the entity being surveyed.
- A description of the organization's data management and analysis system with respect to its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system.
- A description of the organization's procedures for responding to and investigating complaints against accredited organizations, including policies and procedures regarding coordination of these activities with appropriate licensing bodies and ombudsmen programs.
- A description of the organization's policies and procedures with respect to the withholding or removal of accreditation for failure to meet the accreditation organization's standards or requirements, and other actions the organization takes in response to noncompliance with its standards and requirements.
- A description of all types (for example, full and partial) and categories (for example, provisional, conditional, and temporary) of accreditation offered by the organization, the duration of each type and category of accreditation, and a statement identifying the types and categories that would serve as a basis for accreditation if CMS approves the accreditation organization.
- A list of all currently accredited MA organizations and the type, category, and expiration date of the accreditation held by each of them.
- A list of all full and partial accreditation surveys scheduled to be performed by the accreditation organization as requested by CMS.
- The name and address of each person with an ownership or control interest in the accreditation organization.
- The NCQA's past performance in the deeming program and results of recent deeming validation reviews, or look-behind audits conducted as part of continuing Federal oversight of the deeming program under § 422.157(d).

No comments were received in response to the proposed notice published November 29, 2010.

Therefore, based on the review and observations described in section III of this final notice, we have determined that NCQA's requirements for HMOs and local PPOs continue to meet or exceed our requirements. We renew the MA deeming authority of the NCQA for HMOS and PPOs for a term of 4 years. The new term of approval began October 19, 2010, and ends October 18, 2014.

IV. Results of the Review Process

Using the information listed in section III of this final notice, we determined that NCQA's current accreditation program for HMO and PPO MA plans continues to be at least as stringent as the MA requirements contained in the 6 categories specified in section 1852(e)(4)(C) of the Act and our methods of evaluation for those areas.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 9, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–6222 Filed 3–24–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Voluntary Establishment of Paternity—NPRM.

OMB No.: 0970–0175.

Description: Section 466(a)(5)(C) of the Social Security Act requires States to pass laws ensuring a simple civil process for voluntarily acknowledging paternity under which the State must provide that the mother and putative father must be given notice, orally and in writing, of the benefits and legal responsibilities and consequences of acknowledging paternity. The information is to be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program that collect information from the parents of children that are born out of wedlock.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Disclosure	1,167,097	1	0.17	198,406.49

Estimated Total Annual Burden Hours: 198,406.49.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–7077 Filed 3–24–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0620]

The National Antimicrobial Resistance Monitoring System Strategic Plan 2011–2015; Request for Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for the notice that appeared in the **Federal Register** of January 24, 2011 (76 FR 4120). In the notice, FDA requested comments on a document for the National Antimicrobial Resistance Monitoring System (NARMS) entitled "NARMS Strategic Plan 2011–2015." The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments. Based on requests received, additional information is being placed in the docket related to the development of the Strategic Plan. This information can also be viewed at the Web sites listed in section III of this document.

DATES: Submit either electronic or written comments by May 24, 2011.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Patrick McDermott, Center for Veterinary Medicine (HFV–530), Food and Drug Administration, 8401 Muirkirk Rd., Laurel, MD 20708, 301–210–4213, *e-mail: patrick.mcdermott@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 24, 2011 (76 FR 4120), FDA published a notice with a 60-day comment period to request comments from stakeholders on strategies to address a document for the NARMS program entitled "NARMS Strategic Plan 2011–2015." The notice expressed FDA's interest in receiving comments on the goals and objectives in the Strategic Plan and whether the goals and objectives meet the recommendations of the subcommittee.

The Agency has received requests for a 60-day extension of the comment period along with request for background material on the development of the "NARMS Strategic Plan 2011–2015." The requests conveyed concern that the current 60-day comment period does not allow respondents sufficient time to address fully the many important issues FDA raised in the notice.

FDA has considered the requests and is extending the comment period for the notice for 60 days, until May 24, 2011. The Agency believes that a 60-day extension allows adequate time for interested persons to submit comments without significantly delaying the Agency's consideration of these important issues.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain documents at either *http://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/NationalAntimicrobialResistanceMonitoringSystem/default.htm, http://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/NationalAntimicrobialResistanceMonitoringSystem/ucm062630.htm, http://www.fda.gov/AnimalVeterinary/SafetyHealth/AntimicrobialResistance/NationalAntimicrobialResistanceMonitoringSystem/ucm059135.htm, http://www.fda.gov/ohrms/dockets/ac/07/briefing/2007-4329b_02_06_NARMS%20Review%20Update.pdf,* or *http://www.regulations.gov.*

Dated: March 21, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–7068 Filed 3–24–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0155]

Pediatric Anesthesia Safety Initiative (PASI)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of the Pediatric Anesthesia Safety Initiative (PASI). The goal of PASI is to bridge the scientific and clinical gaps in the field of pediatrics to ensure the safe use of anesthetic and sedative agents in children. FDA seeks under PASI to encourage and facilitate scientific collaboration among multiple stakeholders within a public-private partnership (PPP) framework and to support the conduct of non-clinical and clinical studies to answer unknown questions regarding the effects of anesthetics and sedatives in the pediatric population. The output from PASI will help to inform the work of FDA as part of its public health mission.

DATES: Important dates are as follows:

1. The application due date is April 29, 2011.
2. The anticipated start date is July 14, 2011.
3. The opening date is March 30, 2011.
4. The expiration date is April 30, 2011.

For Further Information and Additional Requirements Contact: ShaAvhree Buckman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 4554, Silver Spring, MD 20993, 301–796–1653, *e-mail: ShaAvhreeBuckman@fda.hhs.gov.* Vieda Hubbard, Office of Acquisitions & Grant Services, Food and Drug Administration, 5630 Fishers Lane (HFA–500), Rockville, MD 20857, 301–827–7177, *e-mail: vieda.hubbard@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://grants.nih.gov/grants/guide/* (select the "Request for Applications" link), *http://www.grants.gov/* (see "For Applicants" section), and *http://www.fda.gov/AboutFDA/PartnershipsCollaborations/PublicPrivatePartnershipProgram/ucm166082.htm.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–11–005.
93.103.

A. Background

Non-clinical studies in juvenile animal models have shown that exposure to some anesthestics and sedatives is associated with neurodegenerative changes in the central nervous system, as well as memory and learning deficits. Anesthetic agents that have been specifically implicated are *N*-methyl-D-aspartate (NMDA) receptor antagonists, such as ketamine, and gamma aminobutyric acid (GABA) agonists, such as sevoflurane. The anesthesia community and FDA acknowledge that there are insufficient human data to either support or refute the clinical relevance of these findings for pediatric patients. Therefore, numerous non-clinical and clinical studies are needed to assess the effect of anesthetics and sedatives on the developing human brain, including long-term studies in neonates and young children. However, the planning and performance of the numerous studies needed to address the aforementioned issues will involve enormous challenges in terms of design, assurance of validity and reliability of the outcome measures, and ethical considerations. It is unlikely that any one entity will possess the necessary expertise and resources to accomplish all the work needed to address the issues in an expeditious manner.

B. Objectives

PASI aims to bridge the scientific and clinical gaps in the field of pediatrics to ensure the safe use of anesthetic and sedative agents in children. Specific activities to be funded through this announcement include, but are not limited to:

1. Project management of PASI PPP:

- Development, implementation, and management of a scientific and administrative infrastructure to support the creation and execution of a series of projects aligned with PASI.
- Coordination of the overall governance board, to include luminary experts to lead the overall PPP; said governance board to establish necessary

steering committees and working groups to ensure appropriate project implementation, oversight, and management for all projects under the PPP.

• Development of a scientific review panel to evaluate the progress of projects funded under the PPP and development of feasibility plans for additional projects aligned with PASI.

• Coordination with FDA and other partners; the development and publication of scientific articles in support of educational and outreach activities (with data, know-how, and other outcomes from the aforementioned projects supported under the PPP) and to benefit patients and other stakeholders.

• Development of a strategy to identify and establish relationships with key experts in the fields of anesthesia and sedation, including stakeholders from industry, professional organizations, academia, and awardees of the projects under the "research and analysis" section for leveraging and collaborative efforts under PASI.

• Coordination of annual scientific workshops with collaboration by FDA and the aforementioned experts in the fields of anesthesia and sedation, including stakeholders from industry, professional organizations, academia, and Government Agencies.

2. Research projects (which may include, but are not limited to):

• Clinical trials including prospective, randomized, and blinded investigations assessing the immediate and delayed neurodevelopmental effects of regional/caudal anesthesia versus general anesthesia in neonates/infants;

• Observational trials including the comparison of two groups of children, one group exposed to general anesthesia within the first 3 years of life and the other, unexposed. Assessments should utilize neuropsychological tests of attention, memory, motor function, and behavior; and

• Epidemiologic investigations surveying large existing population databases for cognitive developmental effects where exposure to general anesthesia before the age of 3 can be compared to the overall population.

C. Eligibility Information

Higher education institutions:

• Public/state-controlled institutions of higher education

• Private institutions of higher education

The following types of higher education institutions are always encouraged to apply for National Institutes of Health support as public or private institutions of higher education:

• Hispanic serving institutions

• Historically Black colleges and universities

• Tribally controlled colleges and universities

• Alaska Native and Native Hawaiian serving institutions

Nonprofits other than institutions of higher education

• Nonprofits with 501(c)(3) Internal Revenue Service (IRS) status (other than institutions of higher education)

• Nonprofits without 501(c)(3) IRS status (other than institutions of higher education)

For-profit organizations:

• Small businesses

• For-profit organizations (other than small businesses)

Other:

• Regional organizations

Non-domestic (non-U.S.) entities (foreign organizations) are not eligible to apply. Foreign (non-U.S.) components of U.S. organizations are not allowed.

II. Award Information/Funds Available

A. Award Amount

FDA intends to fund one or more awards, corresponding to a total of $1 million, for fiscal year 2011, to carry out the project management and research project objectives described in Part I of this document. Future year amounts will depend on annual appropriations. No more than four awards are anticipated under this FOA. The number of awards is contingent upon FDA appropriations and the submission of a sufficient number of meritorious applications.

B. Length of Support

The anticipated length of the individual awards is 5 years.

III. Electronic Application, Registration, and Submission

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicants should first review the full announcement located at *http://grants.nih.gov/grants/guide/* (select the "Request for Applications" link), *http://www.grants.gov/* (*see* "For Applicants" section) and *http://www.fda.gov/AboutFDA/PartnershipsCollaborations/PublicPrivatePartnershipProgram/ucm166082.htm.* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register.**) For all electronically submitted applications, the following steps are required:

• Step 1: Obtain a Dun and Bradstreet (DUNS) Number

• Step 2: Register With Central Contractor Registration

• Step 3: Obtain Username and Password

• Step 4: Authorized Organization Representative (AOR) Authorization

• Step 5: Track AOR Status

• Step 6: Register With Electronic Research Administration (eRA) Commons Steps 1 through 5, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 6, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit electronic applications to: *http://www.grants.gov/.*

Dated: March 21, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–7055 Filed 3–24–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; LOAN REPAYMENT.

Date: April 7, 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 (Telephone Conference Call).

Contact Person: Carol Lambert, PhD, Scientific Review Officer, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd., One Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892–4874, 301–435–0814, *lambert@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: March 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7137 Filed 3–24–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Host Response to Francisella.

Date: May 11, 2011.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call)

Contact Person: Lynn Rust, PhD, Scientific Review Officer,Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–3938, *lr228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7136 Filed 3–24–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience Review Subcommittee.

Date: June 9–10, 2011.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Beata Buzas, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2081, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: *March 18, 2011.*

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7134 Filed 3–24–11; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mechanisms of Neurodegeneration.

Date: April 18, 2011.

Time: 11 a.m. to 1 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: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@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 21, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–7133 Filed 3–24–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1955–DR; Docket ID FEMA–2011–0001]

Utah; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Utah (FEMA–1955–DR), dated February 11, 2011, and related determinations.

DATES: *Effective Date:* March 11, 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: The notice of a major disaster declaration for the State of Utah is hereby amended to include the Hazard Mitigation Grant Program statewide and the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 11, 2011.

Garfield County for Public Assistance.
Kane and Washington Counties for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program).

All counties in the State of Utah 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. 2011–7011 Filed 3–24–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: TSA Claims Management Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0039, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of information from claimants in order to thoroughly examine and resolve tort claims against the agency.

DATES: Send your comments by May 24, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0039; TSA Claims Management Program allows the agency to collect information from claimants in order to thoroughly examine and resolve tort claims against the agency. TSA receives approximately 1,070 tort claims per month arising from airport screening activities and other circumstances, including motor vehicle accidents and employee loss. The Federal Tort Claims Act (28 U.S.C. 1346(b), 1402(b), 2401(b), 2671–2680) is the authority under which the TSA Claims Management Branch adjudicates tort claims.

The data is collected whenever an individual believes s/he has experienced property loss or damage, a personal injury, or other damages due to the negligence or wrongful act or omission of a TSA employee, and decides to file a Federal tort claim against TSA. Submission of a claim is entirely voluntary and initiated by individuals. The claimants (or respondents) to this collection are typically the traveling public. Currently, claimants file a claim by submitting to TSA a Standard Form 95 (SF–95), which has been approved under OMB control number 1105–0008. Because TSA requires further clarifying information, claimants are asked to complete a Supplemental Information page added to the SF–95. If TSA determines payment is warranted, TSA will send the claimant a form requesting banking information (routing and accounting numbers) in order to direct payment to the claimant. This form has been approved under OMB control number 1652–0039.

Claim instructions and forms are available through the TSA Web site at *http://www.tsa.gov.* Claimants must download these forms and mail or fax them to TSA. On the Supplemental Information page, claimants are asked to provide additional claim information including: (1) E-mail address, (2) airport, (3) location of incident within the airport, (4) complete travel itinerary, (5) whether baggage was delayed by airline, (6) why they believe TSA was negligent, (7) whether they used a third-party baggage service, (8) whether they were traveling under military orders, and (9) whether they submitted claims with the airlines or insurance companies.

If TSA determines payment is warranted, TSA sends the claimant a form requesting: (1) Claimant signature, (2) banking information, and (3) Social Security number (required by the U.S. Treasury for all Government payments to the public pursuant to 31 U.S.C. 3325).

Under the current system of claims submitted by mail or fax, TSA estimates there will be approximately 12,860 respondents on an annual basis, for a total annual hour burden of 8,575 hours.

Use of Results

TSA will use all data collected from claimants to examine and analyze tort claims against the agency to determine alleged TSA liability and to reimburse claimants when claims are approved. In some cases, TSA may use the information to identify victims of theft or to aid any criminal investigations into property theft.

Issued in Arlington, Virginia, on March 22, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–7141 Filed 3–24–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–601, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–601, Application for Waiver of Grounds of Inadmissibility; OMB Control No. 1615–0029.

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 9, 2010, at 75 FR 76745, allowing for a 60-day public comment period. USCIS received one comment 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 25, 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, 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 1615–0029 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the revision of this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the 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:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–601. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information collected on this form is used by U.S Citizenship and Immigration Services (USCIS) to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 13,676 responses at 1 ½ hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,514 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, telephone number 202–272–8377.

Dated: March 21, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–7010 Filed 3–24–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–06]

Notice of Submission of Proposed Information Collection: Section 5(h) Homeownership Program for Public Housing: Submission of Plan and Reporting

AGENCY: Office of Public and Indian Housing.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 24, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or e-mail Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy,

Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 5(h) Homeownership: Data Collection.

OMB Control Number: 2577–0201.

Description of the need for the information and proposed use: 24 CFR Part 906–Section 5(h) Homeownership Program is authorized by Sections 5(h) and 6(c)(4)(D) of the U.S. Housing Act of 1937 (Act). This program was replaced by Section 32 of the Act through enactment of the Quality Housing and Work Responsibility Act of 1998. The data collection is only for gathering information for the ongoing implementation of programs approved under the former 5(h) authority. Public Housing Agencies (PHAs) are required to submit to HUD the dates on which each public housing unit number/address approved under Section 5(h) is sold. The information is currently collected electronically in the Public and Indian Housing Information Center (PIC). The sections in the regulation that impose information collection requirements are as follows: 24 CFR Section 906.17, which requires PHAs to maintain records (including sales and financial records) for all activities incident to implementation of the HUD-approved homeownership plan. Applicable portions of the regulations are attached.

For HUD-approved homeownership plans, PHAs will maintain records which may be subject to audit by HUD and the Government Accounting Office (GAO).

Agency form number: None.

Members of affected public: Public Housing Agencies currently implementing an approved Section 5(h) Homeownership Plan.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

Est. annual burden	Reference	Number of respondents	Freq. of response	EST. avg. response time	Total annual burden
219	24 CFR 906.17	73	10	.3	219

Status of the proposed information collection: Extension of currently approved collection.

The information is currently collected electronically in the Public and Indian Housing Information Center (PIC). Statutory mandates and Federal program requirements would not be met if the collection is not conducted, or is conducted less frequently.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 17, 2011.

Merrie Nichols-Dixon,

Deputy Director, for Office of Policy, Program, and Legislative Initiatives.

[FR Doc. 2011–7013 Filed 3–24–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–07]

Notice of Proposed Information Collection for Public Comment; Public Housing Inventory Removal Application

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 24, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or e-mail Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the

proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Inventory Removal Application.

OMB Control Number: 2577–0075.

Description of the need for the information and proposed use. This collection of information is an extension to the information collection under Paperwork Reduction Act Submission (PRA) 2577–0075 under ICR Reference Number 200707–2577–004 that was approved by OMB on August 15, 2008. This information is needed to implement statutes and regulations concerning what a PHA must submit to HUD in order to receive HUD approval to remove public housing property under Sections 18, 22, 33 of the U.S. Housing Act of 1937, as well as other applicable regulations. For instance, 24 CFR 970.7 specifically provides what documentation a Public Housing Agency (PHA) must submit to HUD in order to receive HUD approval of a request for demolition and/or disposition action. This information collection requests that documentation. HUD will use this information to review document submissions for compliance with all applicable statutes and regulations.

Agency form number, if applicable: HUD–52860, HUD–52860–B, HUD–52860–C, HUD–52860–D, HUD–52860–E, HUD–52860–F.

Members of affected public: Public housing agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 851 PHAs that submit an inventory removal application. The total reporting burden is 6,010 hours.

Status of the proposed information collection: Extension of a currently approved collection

Status of the proposed information collection: Extension to currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 17, 2011.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary for Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2011–7015 Filed 3–24–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.DC), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 17, 2011.

Mark R. Johnston,

Deputy Assistant. Secretary for Special Needs.

[FR Doc. 2011–6761 Filed 3–24–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LL WO31000–L13100000.PP0000–24–1A]

Extension of Approval of Information Collection, OMB Control Number 1004–0196

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year renewal of OMB Control Number 1004–0196 under the Paperwork Reduction Act. This control number covers paperwork requirements for operators and operating rights owners in the National Petroleum Reserve—Alaska (NPRA).

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before April 25, 2011.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0196), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please provide a copy of your comments to the BLM by mail, electronic mail, or fax:

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–912–7102.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate "Attn: 1004–0196" regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Barbara Gamble, Division of Fluid Minerals, at 202–912–7148. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact Ms. Gamble. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.* Select "Department of the Interior" under the heading, "Currently Under Review."

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5

CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond (44 U.S.C. 3506 and 3507). In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d) and 1320.12(a)). For this control number, the BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0196 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Oil and Gas Leasing: National Petroleum Reserve—Alaska (43 CFR part 3130).

Forms: There are no forms associated with control number 1004–0196.

OMB Control Number: 1004–0196.

Abstract: This control number covers paperwork requirements for operators and operating rights owners in the National Petroleum Reserve—Alaska (NPRA). In accordance with the Naval Petroleum Reserves Production Act (42 U.S.C. 6501–6508) and regulations at 43 CFR part 3130 (subparts 3130, 3133, 3135, 3137, and 3138), a respondent may apply to the Bureau of Land Management (BLM) for designation of an NPRA unit agreement and, if the BLM authorizes such an agreement, the respondent may operate under a unit agreement within the NPRA. The BLM uses the information to meet its responsibilities under the relevant legal provisions. There was no drilling activity in the NPRA in fiscal year 2010, and the BLM anticipates none in fiscal year 2011. Consequently, there has been no recent collection of information under this control number. Notwithstanding these recent developments, the BLM seeks renewal of this control number because of the possibility of future operations.

Frequency of Collection: On occasion. Responses are required in order to obtain or retain a benefit.

Estimated Reporting and Recordkeeping "Hour" Burden: 21 responses and 217.75 hours annually. Respondents are not required to purchase additional computer hardware or software to comply with these information requirements. There are no filing fees associated with this information collection. There are no capital or start-up costs involved with this information collection. The following table details the individual components and respective hour burdens of this information collection request:

A. Type of response	B. Number of responses	C. Time per response	D. Total time (B × C)
Royalty reduction (43 CFR 3133.4)	1	16 hours	16 hours.
Suspension of operations (43 CFR 3135.3)	1	4 hours	4 hours.
Notification of operations (43 CFR 3135.6)	2	15 minutes	30 minutes.
Unit designation (43 CFR 3137.21 and 3137.23)	1	80 hours	80 hours.
Notification of unit approval (43 CFR 3137.25)	1	1 hour	1 hour.
Certification for modification (43 CFR 3137.52)	1	4 hours	4 hours.
Acceptable bonding (43 CFR 3137.60)	1	30 minutes	30 minutes.
Change of unit operator (43 CFR 3137.61)	1	45 minutes	45 minutes.
Certification of unit obligation (43 CFR 3137.70)	1	2 hours	2 hours.
Certification of continuing development (43 CFR 3137.71)	1	2 hours	2 hours.
Productivity for a participating area (43 CFR 3137.84)	1	12 hours	12 hours.
Unleased tracts (43 CFR 3137.87)	1	3 hours	3 hours.
Notification of productivity (43 CFR 3137.88)	1	30 minutes	30 minutes.
Notification of productivity for non-unit well (43 CFR 3137.91)	1	30 minutes	30 minutes.
Production information (43 CFR 3137.92)	1	1 hour	1 hour.
Lease extension (43 CFR 3137.111)	1	3 hours	3 hours.
Inability to conduct operations activities (43 CFR 3137.112)	1	2 hours	2 hours.
Unit termination (43 CFR 3137.130)	1	1 hour	1 hour.
Impact mitigation (43 CFR 3137.135)	1	4 hours	4 hours.
Storage agreement (43 CFR 3138.11)	1	80 hours	80 hours.
Totals	21		217.75 hours.

60-Day Notice: As required in 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on August 17, 2010 (75 FR 50775), soliciting public comments. The comment period closed on October 18, 2010. The BLM received one comment from the public in response to this notice. The comment was a general invective about the Federal government, the Department of the Interior, and the BLM. It did not address, and was not germane to, this information collection.

Therefore, we have not changed the collection in response to the comment.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2011–7038 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8102–05, AA–8102–08, AA–8102–10, AA–8102–25, AA–8102–28, AA–8102–37, AA–8102–47; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Koniag, Inc.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until April 25, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: This decision approves conveyance of the subsurface estate of oil and gas and sand and gravel used in connection with prospecting for, extracting, storing, or removing oil and gas in the lands described below, pursuant to the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act. The lands are located on the Alaska Peninsula and are described as:

Seward Meridian, Alaska

T. 29 S., R. 43 W.,
Sec. 31.
Containing approximately 612 acres.

T. 30 S., R. 43 W.,
Secs. 5 to 8, inclusive.
Containing approximately 2,509 acres.

T. 29 S., R. 44 W.,
Secs. 25, 26, 35, and 36.
Containing approximately 2,560 acres.

T. 30 S., R. 44 W.,
Secs. 1 to 4, inclusive;
Secs. 8 to 12, inclusive;
Secs. 14 to 17, inclusive;
Secs. 19 to 23, inclusive;
Secs. 27 to 34, inclusive.
Containing approximately 16,579 acres.

T. 31 S., R. 44 W.,
Secs. 4 to 9, inclusive;
Secs. 17 and 18.
Containing approximately 5,073 acres.

T. 30 S., R. 45 W.,
Secs. 35 and 36.
Containing approximately 1,280 acres.

T. 31 S., R. 45 W.,
Secs. 1 and 2;
Secs. 10 to 16, inclusive.
Containing approximately 5,760 acres.

T. 37 S., R. 50 W.,
Secs. 1 to 24, inclusive;
Secs. 27 to 33, inclusive.
Containing approximately 20,784 acres.

T. 38 S., R. 50 W.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.
Containing approximately 11,388 acres.

T. 39 S., R. 50 W.,
Secs. 4, 5, and 6.
Containing approximately 1,903 acres.

T. 38 S., R. 51 W.,
Secs. 6, 7, 8, and 11;
Secs. 14 to 17, inclusive;
Secs. 19 to 23, inclusive;
Secs. 26 to 32, inclusive;
Secs. 34, 35, and 36.
Containing approximately 11,769 acres.

T. 38 S., R. 52 W.,
Sec. 36.
Containing approximately 630 acres.

T. 40 S., R. 52 W.,
Sec. 5.
Containing approximately 640 acres.

Aggregating approximately 81,487 acres.

Notice of the decision will also be published four times in the Kodiak Daily Mirror.

Eileen Ford,

Land Transfer Resolution Specialist, Land Transfer Adjudication II Branch.

[FR Doc. 2011–6999 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19148–35; LLAK962000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Arctic Slope Regional Corporation. The decision approves conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act. The lands are located north of Anaktuvuk Pass, Alaska, and are located in:

Umiat Meridian, Alaska

T. 2 S., R. 2 E.,
Secs. 1 to 30, inclusive.
Containing approximately 18,991 acres.

T. 2 S., R. 3 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28, 29, and 30.
Containing approximately 9,404 acres.

T. 1 S., R. 8 E.,
Secs. 25 to 36, inclusive.
Containing approximately 7,540 acres.

T. 1 S., R. 9 E.,
Secs. 28 to 33, inclusive.
Containing approximately 3,744 acres.

Aggregating approximately 39,679 acres.

Notice of the decision will also be published four times in the *Arctic Sounder.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until April 25, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic memo, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43

CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Joe J. Labay,

Land Transfer Resolution Specialist, Branch of Preparation and Resolution.

[FR Doc. 2011–7002 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–42653; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Bristol Bay Native Corporation. The decision approves conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act. The lands are in the vicinity of Clarks Point, Alaska, and are located in:

Seward Meridian, Alaska

T. 14 S., R. 56 W.,
Secs. 6, 7, 18, 19, and 30.
Containing 3,076.21 acres.

Notice of the decision will also be published four times in the *Bristol Bay Times.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until April 25, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Linda L. Keskitalo,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–7006 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–07; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Doyon, Limited. The decision approves conveyance of the surface and subsurface estates in the lands described below pursuant to the Alaska Native Claims Settlement Act. The lands are in the vicinity of Alatna, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 21 N., R. 23 W.,
Secs. 23, 24, and 26.
Containing 1,402.46 acres.
T. 19 N., R. 25 W.,
Secs. 4 to 8, inclusive.
Containing 2,789.80 acres.
Aggregating 4,192.26 acres.

Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until April 25, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notice of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Linda L. Keskitalo,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2011–7004 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD00000 L19900000.AL0000

Notice of Call for Nominations for the Bureau of Land Management's California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The Bureau of Land Management's (BLM) California Desert District is soliciting nominations from the public for six members of its California Desert District Advisory Council (Council) to serve a three-year term. Council members provide advice and recommendations to the BLM on the management of public lands in southern California.

ADDRESSES: Nominations should be sent to Teresa Raml, District Manager, Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs (951) 697–5220.

SUPPLEMENTARY INFORMATION: The Council is comprised of 15 private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 11 million acres of BLM-administered public land in southern California's Desert District. The Council meets in formal session three to four times each year in various locations throughout the California Desert District. Council members serve without compensation. Members serve three-year terms and may be nominated for reappointment for an additional three-year term. The terms of six Council members have recently expired. The purpose of this notice is to seek nominations for individuals to fill those positions.

Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior (Secretary) to involve the public in planning and issues related to the management of BLM-administered lands. The Secretary selects Council nominees consistent with the requirements of FLPMA and the Federal Advisory Committee Act (FACA), which require nominees appointed to the Council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands within the area for which the Council is established.

The Council also is balanced geographically, and the BLM will try to find qualified representatives from areas throughout the California Desert District. The District covers portions of eight counties, and includes more than 11 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Public notice begins with the publication date of this notice and nominations will be accepted until May 9, 2011. The three-year term would begin immediately upon confirmation by the Secretary.

The six positions to be filled include one representative of recreation groups or organizations, one representative of non-renewable groups or organizations, one representative of wildlife groups or organizations, and three representatives of the public-at-large (including one elected official).

Any group or individual may nominate a qualified person, based upon education, training, and knowledge of the BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves.

The nomination form may be found on the Desert Advisory Council webpage: *http://www.blm.gov/ca/st/en/info/rac/dac.html*. The following must accompany the nomination form for all nominations:

Letters of reference from represented interests, or organizations, or elected officials;

A completed background information nomination form to include the nominee's work and home addresses and telephone numbers, a biographical sketch including the nominee's work, applicable outside interests, and public service records; and

Any other information that addresses the nominee's qualifications.

Nominees unable to download the nomination form may contact the BLM California Desert District External Affairs staff at (951) 697–5220 to request a copy.

Advisory Council members are appointed by the Secretary, and will be evaluated based on their education, training, and knowledge of the BLM, the California Desert District, and the issues involving BLM-administered public lands.

The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on any FACA and non-FACA boards, committees, or councils.

Teresa A. Raml,

California Desert District Manager.

[FR Doc. 2011–6994 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC07000 L1310000 EJ0000 LXSIGEOT0000]

Notice of Intent To Prepare an Environmental Impact Statement and Environmental Impact Report for the Proposed Casa Diablo IV Geothermal Development Project, Mammoth Lakes, Mono County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, the Federal Land Policy and Management Act of 1976, as amended, and the California Environmental Quality Act of 1970, the Bureau of Land Management (BLM) Bishop Field Office, Bishop, California and the Great Basin Unified Air Pollution Control District (GBUAPCD) (a California state agency) intend to prepare a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) to consider approval of the development of a proposed 33-megawatt (MW) geothermal power plant and associated well field, internal access roads, pipelines, and a transmission line on public and private lands near the Town of Mammoth Lakes, California, and by this notice, are announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping processes for the EIS/EIR. Comments on issues may be submitted in writing until April 25, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/bishop.html*. In order to be included in the Draft EIS/EIR, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS/EIR.

ADDRESSES: You may submit comments related to the Casa Diablo IV Geothermal Development Project by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/bishop.html*
- *E-mail: cabipubcom@ca.blm.gov*
- *Fax:* 760–872–5050
- *Mail:* BLM Bishop Field Office, 351 Pacu Lane, Suite 100, Bishop, California 93514, Attn: Casa Diablo IV Development Project, C/O Steven Nelson, Project Manager.

Documents pertinent to this proposal may be examined at the BLM Bishop Field Office and the Mono County Library at 400 Sierra Park Road, Mammoth Lakes, California.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Margie DeRose, Minerals and Geology Program Manager, Inyo National Forest, telephone (760) 873–2424; or mail to: Steven Nelson, Project Manager, BLM

Bishop Field Office, 351 Pacu Lane, Suite 100, Bishop, California 93514; or e-mail *cabipubcom@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: Mammoth Pacific, L.P. (MPLP) has submitted an application to the BLM to build and operate the Casa Diablo IV Geothermal Development Project in the immediate vicinity of the existing MPLP geothermal projects near the intersection of California State Route 203 and U.S. Highway 395 approximately 3 miles east of Mammoth Lakes, California. The proposed project would be located on Inyo National Forest lands and adjacent private lands within portions of Federal geothermal leases CACA–11667, CACA–11672 and CACA–14408. The proposed project would include construction of a new 33–MW binary geothermal power plant, which would be the fourth geothermal plant in the vicinity; up to 16 wells for production and reinjection, drilled to an approximate 1,600 to 2,000-ft depth; and associated pipelines. A 500-foot transmission line is proposed to interconnect the new power plant to the existing Southern California Edison (SCE) substation at Substation Road. The proposed Casa Diablo IV plant, access roads, well pads, pipelines and transmission line would occupy approximately 100 acres. Of the 16 proposed production/injection well locations, 14 were previously analyzed and approved as slim holes and exploration wells in EA–170–02–15 (2001) and EA–170–05–04 (2005). Three of these exploration wells have already been drilled as of the time of the publication of this notice. The proposed well field area contains two existing production wells and associated pipelines that currently serve three existing power plants in the area.

The leases being developed are already part of a geothermal unit, which is currently producing energy sufficient to operate three existing geothermal plants in the area: The 10–MW "MP–1/G1 plant," the 15–MW "MP–II/G2 plant," and the 15–MW "PLES–I/G3 plant."

The BLM Bishop Field Office will be the lead Federal agency responsible for coordinating the environmental analysis for the Case Diablo IV project under the National Environmental Policy Act of 1969 (NEPA). Authorization of the proposed project would require approval from the BLM as the lead Federal agency responsible for geothermal leasing and development on Federal lands, in coordination with the U.S. Forest Service (FS) as a cooperating agency responsible for surface management and uses on Inyo National Forest lands within the project area. If approved, permits and licenses to be issued by the BLM would include approval of the Plan of Utilization, Geothermal Sundry Notices, Geothermal Drilling Permits, a Commercial Use Permit, a Site License and a Facility Construction Permit. The BLM authorizations would include Conditions of Approval for surface use and occupancy based on recommendations from the FS to ensure consistency with the Inyo National Forest Land and Resource Management Plan. The FS would issue a special use permit for the transmission line. For the BLM, the Bishop Field Manager is the authorized officer. For the FS, the Inyo National Forest Supervisor is the authorized officer. The GBUAPCD will be the lead state agency responsible for coordinating the environmental analysis under the California Environmental Quality Act. The GBUAPCD would issue an Authority to Construct Permit and a Permit to Operate. The approving official is the Air Pollution Control Officer.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS/EIR. The BLM, FS and GBUAPCD have identified the following preliminary issues: air quality; social and economic impacts; groundwater quantity and quality; surface water quantity and quality; geology and soils; plants and animals; cultural resources; transportation; noise and vibration; lands with wilderness characteristics; and recreation.

The BLM will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on any Indian trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7.

Bernadette Lovato,

Bishop Field Manager.

[FR Doc. 2011–7012 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAKA02000–L12200000–EB0000]

Notice of Intent To Collect Fees on Public Land in Tangle Lakes, Alaska, Glennallen Field Office Under the Federal Lands Recreation Enhancement Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act of 2004 (REA), the Bureau of Land Management (BLM) Glennallen Field Office will begin to collect fees in 2011 upon completion of construction at the Tangle Lakes Campground, mile 121.5 Denali Highway, Alaska (Section 34, T. 21 S., R. 9 E., Fairbanks Meridian).

DATES: Submit comments on or before April 25, 2011. The public is encouraged to comment. Effective 6 months after the publication of this notice and upon completion of construction, the BLM Glennallen Field Office will initiate fee collection in the Tangle Lakes Campground, unless the BLM publishes a **Federal Register** notice to the contrary. Future adjustments in the fee amount will be modified in accordance with the Glennallen Field Office's recreation fee business plan; consultation with the BLM Anchorage District Office; and the public being notified prior to any fee increase.

ADDRESSES: Field Manager, Glennallen Field Office, Bureau of Land Management, P.O. Box 147, Mile Post 186.5 Glenn Highway, Glennallen, Alaska 99588.

FOR FURTHER INFORMATION CONTACT: Elijah Waters, Recreation Branch Chief or Marcia Butorac, Outdoor Recreation Planner, 907–822–3217; *address:* P.O. Box 147, Mile Post 186.5 Glenn Highway, Glennallen, Alaska 99588; *e-mail: AK_GFO_GeneralDelivery@blm.gov.*

SUPPLEMENTARY INFORMATION: The Tangle Lakes Campground is located in central Alaska along the Denali Highway at milepost 21.5 and lies within the nationally designated Delta Wild and Scenic River corridor and within the nationally registered Tangle Lakes Archaeological District. Under section 3(g) of the REA, the Tangle Lakes Campground will qualify as a site wherein visitors can be charged an "Expanded Amenity Recreation Fee." Pursuant to the REA and regulations at 43 CFR part 2931, fees may be charged for developed campgrounds. Money collected from fees will be used at the Tangle Lakes Campground for visitor services as well as repair, maintenance, and facility enhancement that affects visitor enjoyment, access, health, and safety. The BLM is committed to provide and receive fair value for the use of developed recreation facilities and services that meet public-use demands, provide quality experiences, and protect important resources. Camping fees collected at the Tangle Lakes Campground will help ensure funding for the maintenance of facilities and provide recreational opportunities and resource protection. The amount of the recreation fee shall be commensurate with fees charged at the other campgrounds within the Glennallen Field Office administrative boundaries with consideration to benefits and services provided to the visitor, cost of operation and maintenance, market assessment, and public comment. Camping fees will be posted at the site and collection will take place utilizing a self-service station. Campers using the America the Beautiful—the National Parks and Federal Recreational Lands Pass (Interagency Senior Pass and Interagency Access Pass) will receive a 50 percent discount to the camping fee.

Reconstruction of the Tangle Lakes Campground is planned for the summer of 2011. The improvements will provide designated campsites with tables, tent or trailer space and fire rings, as well as a picnic area, parking, roadways, trails and improved outhouses. The campground currently maintains accessible toilet facilities, bear-proof refuse containers, and drinking water. Upon completion of construction, the facility will comply with the REA regulation for developed campgrounds allowing for an expanded amenity recreation fee.

Public comments from recreationists have been gathered for many years through voluntary registration stands and Government Performance and Results Act (GPRA) surveys regarding fee collection within the Glennallen Field Office area. Fees are expected by visitors using Glennallen Field Office campground facilities. In 2004, 52.2 percent of GPRA-surveyed visitors reported they were willing to pay more for their stay in Glennallen Field Office campgrounds. In 2008, 86 percent of the GPRA survey respondents visiting Glennallen Field Office campgrounds felt that the fee was appropriate for the site.

As provided for in section 4(d)(1)(C) of the REA, the Governor of Alaska chose not to establish a committee to review recreation fee proposals. The Glennallen Field Office did engage the public through meetings for the update of the Delta Wild and Scenic River management plan. The public was provided details of the planned improvements and collection fees at the Tangle Lakes Campground and given an opportunity to comment. Visitors to the campground over the last several years have been informed of the pending facility changes and fees being charged at the site.

In December 2004, the REA was signed into law. For 10 years, the Secretaries of the Interior and Agriculture have authority under the REA to establish, modify, charge, and collect fees for use of some Federal recreation lands and waters, and contains specific provisions addressing public involvement in the establishment of recreation fees. The REA also directs the Secretaries to publish a 6-month advance notice in the **Federal Register** whenever new recreation fee areas are established. In accordance with BLM recreation fee program policy, the Glennallen Field Office is developing a Recreational Fee Business Plan to be available at the Glennallen Field Office and the Anchorage District Office. The business plan explains the fee collection process and how fees will be used at the fee site.

The BLM welcomes public comments. Please send comments to the address specified in the **ADDRESSES** section. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 16 U.S.C. 6803(b).

Gary Reimer,

District Manager, Anchorage District Office.

[FR Doc. 2011–7008 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT920–11–L13200000–EL000, UTU–88235]

Notice of Invitation to Participate In Coal Exploration License, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: All interested qualified parties are hereby invited to participate with Ark Land Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in Sevier County, Utah.

DATES: The notice of invitation to participate in this coal exploration license was published, once each week for 2 consecutive weeks, in the *Emery County Progress* (beginning the third week of December 2010), and by virtue of this announcement in the **Federal Register.**

Any person seeking to participate in this exploration program must send written notice to both the Bureau of Land Management (BLM) and Ark Land Company, as provided in the **ADDRESSES** section below, no later than April 25, 2011.

ADDRESSES: Copies of the exploration license and plan are available for review from 7:45 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays (serialized under the number of UTU–88235) in the public room of the BLM State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah.

The written notice to participate in the exploration program should be sent to Stan Perkes, Bureau of Land Management, Utah State Office, Division of Lands and Minerals, P.O. Box 45155, Salt Lake City, Utah 84145 and to Mark Bunnell, Geologist, Ark Land Company, c/o Sufco Mine, 597 South, 800 West, Salina, Utah 84654.

FOR FURTHER INFORMATION CONTACT: Stan Perkes by telephone (801) 539–4036, or by e-mail: *Stan_Perkes@blm.gov.*

SUPPLEMENTARY INFORMATION: The exploration activities will be performed pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 201(b), and to the regulations at 43 CFR 3410. The purpose of the exploration program is to

gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the coal resources. The exploration program is fully described and will be conducted pursuant to an exploration license and plan approved by the BLM. The exploration plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate. The area to be explored includes the following-described lands in Sevier County, Utah:

Salt Lake Meridian, Utah

T. 22 S., R. 4 E.,
Sec. 14, all;
Sec. 15, all.

The land area described contains 1,274.20 acres.

The Federal coal within the above-described lands is currently not leased for development of Federal coal resources.

Authority: 43 CFR 3410.2–1(c)(1).

Jeff Rawson,

Associate State Director.

[FR Doc. 2011–6998 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of Public Meetings, Twin Falls District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) and subcommittee for the Jarbidge Resource Management Plan (RMP) will meet as indicated below.

DATES: April 27, 2011. On April 27, 2011, the Twin Falls District RAC members will meet at the Best Western Sawtooth Inn at 2653 S. Lincoln Street, Jerome, Idaho. The meeting will begin at 9:15 a.m. and end no later than 5 p.m. The public comment period for the RAC meeting will take place 9:30 a.m. to 10 a.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho, 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During the April 27th meeting, there will be discussion regarding the upcoming 2012 RAC member nominations, current RAC subgroups, the application of the Wild Lands Policy for the Twin Falls District, local highway district issues and an update for the proposed strategy for future management of wild horses and burros.

Additional topics may be added and will be included in local media announcements. More information is available at *http://www.blm.gov/id/st/en/res/resource_advisory.3.html* RAC meetings are open to the public. For further information about the meeting, please contact Heather Tiel-Nelson, Public Affairs Specialist for the Twin Falls District, BLM at (208) 736–2352.

Dated: March 15, 2011.

Bill Baker,

District Manager.

[FR Doc. 2011–7073 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZC03000 L14300000.ES0000.241A; AZA–34593]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Lease and Conveyance of Public Land, Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Lake Havasu City (City) in Mohave County, Arizona has filed an application to lease or purchase 280 acres of public land under the Recreation and Public Purposes (R&PP) Act, as amended, to be used for recreation and public purposes. The City proposes to use the land for a municipal golf course, multi-agency environmental and eco-educational center, community park, performing arts center, recreational support facilities, visitors' center, and hiking trails. The Bureau of Land Management (BLM) has examined the land and found it suitable to be classified for lease and/or conveyance under the provisions of the R&PP Act, as amended.

DATES: Interested parties may submit written comments regarding this proposed classification and lease or sale of this public land until May 9, 2011.

ADDRESSES: Mail written comments to Ramone B. McCoy, Field Manager, BLM Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406.

FOR FURTHER INFORMATION CONTACT: Sheri Ahrens, Realty Specialist, at above address, or by e-mail at: *Sheri_Ahrens@blm.gov,* or phone (928) 505–1284.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act (43 U.S.C. 315(f)), and Executive Order No. 6910, the BLM has examined and found suitable to be classified for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*), the following described public land:

Gila and Salt River Meridian

T. 13 N., R. 20 W.,
Sec. 24, E½SW¼, E½SE¼NW¼SW¼, N½NE¼SW¼SW¼, S½N½SW¼SW¼, S½SW¼SW¼, and SE¼.

The area described contains 280 acres in Mohave County.

In accordance with the R&PP Act, Lake Havasu City filed an application to lease and/or purchase the above-described property to develop a City park and public purpose facilities. Rental and sale prices have been determined using BLM R&PP pricing guidelines. Additional detailed information pertaining to this application, plan of development, and site plans are in case file AZA 34593, located in the BLM Lake Havasu Field Office at the address above.

The land is not needed for any Federal purpose. Lease and subsequent conveyance of this land is consistent with the BLM Lake Havasu Field Office Resource Management Plan dated May 10, 2007, and would be in the public interest. Lake Havasu City has not applied for more than 640 acres for park and public purpose facilities in a year, the limit set in 43 CFR 2741.7(a)(2), and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b). Any lease and subsequent conveyance will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior. Any lease or patent of this land will also contain the following reservations to the United States:

1. Provisions of the R&PP Act, including but not limited to, the terms required by 43 CFR 2741.9;

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

3. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

Any lease or conveyance will also be subject to valid existing rights; will contain any terms or conditions required by law or regulation, including, but not limited to, any terms and conditions required by 43 CFR 2741.9; and will contain an appropriate indemnification clause protecting the United States for claims arising out of the lessee's or patentee's use, occupancy, or operations on the leased or patented lands. It will also contain any other terms or conditions deemed necessary or appropriate by the authorized officer.

As of March 25, 2011, the above-described land is segregated from appropriation under the public land laws, including the United States mining laws, except for lease and sale under the R&PP Act.

Public Comments: Interested parties may submit comments involving the suitability of the land for park and public purpose facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize future uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may also submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching its decision, or any other factor not directly related to the suitability of the land for R&PP Act use.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Any adverse comments will be reviewed by the BLM State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on May 24, 2011. The lands will not be available for lease or conveyance until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

Ramone B. McCoy,

Field Manager.

[FR Doc. 2011–7022 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000.L14300000.FR0000; WYW–165173]

Notice of Realty Action: Non-Competitive (Direct) Sale of Public Land in Hot Springs County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: A 10-acre parcel of public land in Hot Springs County, Wyoming is being considered for non-competitive (direct) sale to Jim and Terry Wilson under the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976, at no less than the appraised market value.

DATES: Interested parties may submit comments regarding the proposed sale of the land until May 9, 2011.

ADDRESSES: Written comments should be mailed to the Field Manager, Bureau of Land Management, Worland Field Office, 101 South 23rd Street, Worland, Wyoming 82401, or e-mailed to *worland_wymail@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Karla Bird, Field Manager, Bureau of Land Management (BLM), Worland Field Office, 101 South 23rd Street, Worland, Wyoming 82401; (307) 347–5100; or *worland_wymail@blm.gov.*

SUPPLEMENTARY INFORMATION: The following described public land in Hot Springs County, Wyoming has been examined and found suitable for sale under the authority of Section 203 of the FLPMA, (43 U.S.C. 1701, 1713):

Sixth Principal Meridian

T. 43 N., R. 92 W.,
Sec. 22, tract 51–R.

The land described contains 10 acres, more or less, in Hot Springs County.

The land is not needed for any Federal purpose. The conveyance is consistent with the BLM Washakie Resource Management Plan dated September 1988, and would be in the public interest. On the date of publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or 2 years from the date of publication of this notice in the **Federal Register,** whichever comes first.

The public land will not be offered for sale until 60 days from the date of publication of this notice in the **Federal Register**, at the appraised market value of $3,600. A copy of the approved appraisal is available at the above address. The patent, if issued, will be subject to the following terms, conditions and reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The patent will be subject to all valid existing rights documented on the official public land records at the time of patent issuance.

This land is being offered by direct sale to Jim and Terry Wilson pursuant to 43 CFR 2711.3–3(a)(5). Direct sale procedures are appropriate since the land has been inadvertently occupied and utilized for many years as a portion of a working ranch headquarters. The land is encumbered with facilities constructed in trespass prior to the Wilsons purchasing the adjoining ranch property. The facilities include two employee residences, a livestock scale house, airplane hanger, water storage tank, pipeline and a portion of a corral which are deemed necessary for the continued ranching operation. Removal of the structures would pose an unreasonable economic penalty on the Wilsons and would not serve any public interest. Adjoining public land uses will not be impacted by the sale.

Interested parties may submit written comments to the BLM Worland Field Manager at the address above. Comments, including names and street addresses of respondents, will be available for public review at the BLM Worland Field Office during regular business hours. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While

you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the BLM Wyoming State Director who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711)

Donald A. Simpson,

Wyoming State Director.

[FR Doc. 2011–7007 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000 L14300000.FR0000; WYW179015]

Notice of Realty Action: Application for a Recordable Disclaimer of Interest in Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: John L. Nau III and Barbara E. Nau, of Houston, Texas, and Donald and Diane Siegel, Trustees of the Siegel Residence Trust of Wilson, Wyoming, have filed a joint application for Recordable Disclaimer of Interest from the United States for certain riparian parcels in Teton County, Wyoming that are adjacent to other parcels they own in the County. The cloud on the title for these parcels was created by the Snake River RMP which identified those lands, along with others, for disposal by the Bureau of Land Management (BLM) to other public entities.

DATES: Interested parties may submit comments or objections to this application until June 23, 2011.

ADDRESSES: Comments should be sent to Janelle Wrigley, Realty Officer, Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; or e-mailed to *Janelle_Wrigley@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Janelle Wrigley, Realty Officer, BLM, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; (307) 775–6257; or e-mail *Janelle_Wrigley@blm.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745, and 43 CFR 1864, John L. Nau III, Barbara E. Nau and Donald and Diane Siegel have filed a joint application for Recordable Disclaimer of Interest in the following described land:

Sixth Principal Meridian

T. 42 N., R. 116 W.,

That land riparian to lots 4, 5 and 6 of section 20 lying between the meander lines shown on the Plat of Survey approved June 5, 1979, for the Yodler Subdivision and the thread of the Snake River.

The area described contains approximately 5 acres in Teton County.

The Naus and the Siegels contend that they carry title to those lands from the meander line of Yodler lots 4, 5, and 6 to the Thread of the Snake River. The BLM has determined that the United States has no claim to, nor interest in the above described land and issuance of the proposed disclaimer would help remove the cloud on the title to those lands created by the RMP.

For a period of 90 days from date of publication of this notice, interested persons may submit written comments on or objections to the proposed disclaimer. If no objections are submitted, the disclaimers will be issued to John L. Nau III, Barbara E. Nau, and Donald and Diane Siegel, Trustees of the Siegel Residence Trust, their successors or assigns, after the 90-day comment period ends.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the BLM Wyoming State Director. In the absence of any adverse comments, a Disclaimer of Interest may be approved stating that the United States does not have a valid interest in the described land.

(Authority: 43 CFR 1864)

Donald A. Simpson,

Wyoming State Director.

[FR Doc. 2011–7000 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC09000.L58790000.EU0000. CACA 50168]

Notice of Realty Action: Direct Sale of Public Lands in Santa Clara County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Hollister Field Office, proposes to sell three separate parcels of public land totaling approximately 212.67 acres in Santa Clara County, California. The public lands would be sold to the Santa Clara County Open Space Authority for the appraised fair market value. The total appraised value of all three parcels is $395,000.

DATES: Comments regarding the proposed sale must be received by the BLM on or before May 9, 2011.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Field Manager, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, California 95023.

FOR FURTHER INFORMATION CONTACT: Christine Sloand, Realty Specialist, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, California 95023, or phone (831) 630–5022.

SUPPLEMENTARY INFORMATION: The following 3 parcels of public land are proposed for direct sale to the Santa Clara County Open Space Authority (Authority) in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713 and 1719).

The parcels are described as follows:

Mount Diablo Meridian

Parcel No. 1,

T. 10S., R. 1E.,
Sec. 3, lot 1.

The area described contains 123.60 acres in Santa Clara County.

The parcel has an appraised fair market value of $80,000.

Parcel No. 2,

T. 10S., R. 2E.,
Sec. 5, lot 2.

The area described contains 23.42 acres in Santa Clara County.

The parcel has an appraised fair market value of $135,000.

Parcel No. 3,

T. 10S., R. 2E.,
Sec. 6, lots 3, 4, and 6.

The area described contains 65.65 acres in Santa Clara County.

The parcel has an appraised fair market value of $180,000.

The public lands were first identified as suitable for disposal in the 1984 BLM Hollister Resource Management Plan (RMP) and remain available for sale under the 2007 Hollister RMP revision. The lands are not needed for any other Federal purpose, and their disposal would be in the public interest. The lands are difficult and uneconomic to manage as part of the public lands because they lack legal access, and are small parcels, isolated from other public lands. The BLM is proposing a direct sale to the Authority because the lands lack legal access and the Authority wishes to purchase the lands to preserve them as open space. The BLM has concluded the public interest would be best served by a direct sale. The BLM has completed a mineral potential report which concluded there are no known mineral values in the lands proposed for sale. The BLM proposes that conveyance of the Federal mineral interests would occur simultaneously with the sale of the lands.

On March 25, 2011, the above described lands will be segregated from appropriation under the public land laws, including the mining laws, except for the sale provisions of the FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the identified public lands, except application for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2802.15 and 2886.15. The segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on March 25, 2013, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The lands would not be sold until at least May 24, 2011. The Authority would be required to pay a $50 nonrefundable filing fee for conveyance of the mineral interests and the associated administrative costs. Any patent issued would contain the following terms, conditions, and reservations:

1. A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C 945);

2. A condition that the conveyance be subject to all valid existing rights of record;

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands;

4. Additional terms and conditions that the authorized officer deems appropriate.

Detailed information concerning the proposed sale including the appraisal, planning and environmental documents, and mineral report are available for review at the location identified in **ADDRESSES** above.

Public Comments regarding the proposed sale may be submitted in writing to the attention of the BLM Hollister Field Manager (*see* **ADDRESSES** above) on or before May 9, 2011. Comments received in electronic form, such as e-mail, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2(a) and (c).

Tom Pogacnik,

Deputy State Director for Natural Resources.

[FR Doc. 2011–7017 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

[LLCAC09000.L58790000.EU0000. CACA 50168 02]

Notice of Realty Action: Modified Competitive Bid Sale of Public Land in Santa Clara County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Hollister Field Office, proposes to sell a parcel of public land consisting of approximately 9.27 acres in Santa Clara County, California, for not less than the appraised fair market value of $41,000. The sale will be conducted as a modified competitive bid auction, whereby only the adjoining landowners would have the opportunity to submit written sealed bids to purchase the public land.

DATES: Written comments regarding this proposed sale must be received by the BLM on or before May 9, 2011. The adjoining landowners have until 3 p.m. Pacific Standard Time May 30, 2011 to submit sealed bids to the BLM Hollister Field Office at the address listed below. Sealed bids will be opened May 31, 2011, which will be the sale date.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Field Manager, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, California 95023. Sealed bids must also be submitted to this address.

FOR FURTHER INFORMATION CONTACT: Dan Byrne, Realty Specialist, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, California 95023, or phone (831) 630–5021.

SUPPLEMENTARY INFORMATION: The following public land is proposed for sale in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713):

Mount Diablo Meridian

T. 9 S., R. 1E.,
Sec. 34, lot 3.

The area described contains approximately 9.27 acres, more or less, in Santa Clara County.

The public land was originally identified as suitable for disposal in the 1984 BLM Hollister Resource Management Plan (RMP) and remains available for sale under the 2007 Hollister RMP revision. The land is not needed for any other Federal purpose, and its disposal would be in the public interest. The public land proposed for sale lacks legal access and is isolated from other public lands. The BLM's purpose in selling the land is to dispose of land that is difficult and uneconomic to manage as part of the public lands. The BLM proposes to limit bidding to the adjoining landowners because the land lacks legal access and because the appraisal concluded the land could not be developed as an independent parcel.

The BLM's objective in limiting bidding to the adjoining landowners is to encourage the assemblage of the public land with the adjoining private land to achieve the highest and best use of the public land. Under 43 CFR 2711.3–2, BLM may limit bidding to certain persons when the authorized officer determines it is necessary in order to recognize equitable considerations or public policies. In this

case, BLM believes that it is good public policy to promote the assemblage of the public land with adjoining private land, because that is the highest and best use of the public land and because it is equitable to provide each adjoining landowner an opportunity to purchase the public land. There are three landowners adjoining the public land; Mr. and Mrs. David Billingsley, Midpeninsula Regional Open Space District, and American Tower. The BLM has completed a mineral potential report which concluded there are no known mineral values in the land proposed for sale. The proposed sale would include the conveyance of both the surface and mineral interests of the United States.

On March 25, 2011, the above described land will be segregated from appropriation under the public land laws, including the mining laws, except for the sale provisions of the FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the identified public lands, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2802.15 and 2886.15. The segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on March 25, 2013, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The land would not be sold until at least May 24, 2011. Any conveyance document issued would contain the following terms, conditions, and reservations:

1. A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C 945);

2. A condition that the conveyance be subject to all valid existing rights of record;

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands;

4. Additional terms and conditions that the authorized officer deems appropriate. Detailed information concerning the proposed land sale including the appraisal, planning and environmental documents, and a mineral report are available for review at the location identified in **ADDRESSES** above. The BLM will send the adjoining landowners of record an Invitation for Bids (IFB). Adjoining landowners must follow the instructions in the IFB to participate in the bidding process. Sealed bids must be for not less than the federally approved fair market value of $41,000. Each sealed bid must include a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management, for 10 percent of the amount of the bid. A bid to purchase the land will constitute an application for conveyance of the Federal mineral interest, and in conjunction with the final payment, the purchaser will be required to pay a $50 nonrefundable filing fee for the conveyance of the mineral interests. If more than one sealed bid is submitted for the same high bid amount, the high bidders will be notified and allowed to submit additional sealed bids. The highest qualifying bid will be declared the high bid and the high bidder will receive written notice. The BLM will return checks submitted by unsuccessful bidders by U.S. mail or in person on the day of the sale. The successful bidder must submit the remainder of the full bid price prior to the expiration of 180 days from the date of the sale, in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management. Personal checks will not be accepted. Failure to submit the full bid price prior to, but not including the 180th day following the day of the sale will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. No exceptions will be made. The BLM may accept or reject any or all offers, or withdraw the land from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would not be fully consistent with the FLPMA or other applicable law or is determined to not be in the public interest. Under Federal law, the public lands may only be conveyed to U.S. citizens 18 years of age or older; a corporation subject to the laws of any State of the United States; a State, State instrumentality, or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands under the laws of the State of California. If not sold, the land described in this Notice may be identified for sale later without further legal notice and may be offered for sale by sealed bid, internet auction, or oral auction. In order to determine the value, through appraisal, of the land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer.

Public Comments regarding the proposed sale may be submitted in writing to the attention of the BLM Hollister Field Manager (*see* **ADDRESSES** above) on or before, May 9, 2011. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2(a) and (c).

Karla Norris,

Associate Deputy State Director, Natural Resources.

[FR Doc. 2011–7001 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2256–672]

Proposed Information Collection; OMB Control Number 1024–0038

AGENCY: National Park Service, 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 (44 U.S.C. 3507 *et seq.*) and 5 CFR part 1320, Reporting and Record Keeping Requirements, 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 information collection. This IC is scheduled to expire on May 31, 2011. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure we are able to consider your comments on this IC, we must receive them by May 24, 2011.

ADDRESSES: Send your comments on the IC to: John W. Renaud, Project Coordinator, Historic Preservation Grants, Heritage Assistance Programs, NPS, 1849 C St., NW., Mailstop 2256, Washington, DC 20240; via fax at 202/371–1961, or via e-mail to *John_Renaud@nps.gov.* Please send a copy of your comments to Rob Gordon, Information Collection Clearance Officer, NPS, 1849 C Street, NW., Mailstop 2605, Washington, DC 20240, or via e-mail at *Robert_Gordon@nps.gov.*

FOR FURTHER INFORMATION CONTACT: John W. Renaud by mail or e-mail (*see* **ADDRESSES**) or by telephone at 202/354–2066.

SUPPLEMENTARY INFORMATION:

I. Abstract

II. This set of information collections has an impact on State, tribal, and local governments that wish to participate formally in the National Historic Preservation Partnership (NHPP) Program, and State and tribal governments that wish to apply for Historic Preservation Fund (HPF) grants. The NPS uses the information collection to ensure compliance with the National Historic Preservation Act, as amended (16 U.S.C. 470 *et seq.*), as well as government-wide grant requirements OBM has issued and the Department of the Interior implements through 43 CFR part 12. This information collection also produces performance data NPS uses to assess its progress in meeting goals set in Departmental and NPS strategic plans created pursuant to the 1993 Government Performance and Results Act, as amended. This request for OMB approval includes local government burden for information collections associated with various aspects of the Certified Local Government (CLG) program; State government burden for information collections related to the CLG program; the program-specific aspects of HPF grants to States, maintenance of a State inventory of historic and prehistoric properties, tracking State Historic Preservation Office historic preservation consultation with Federal agencies, reporting on other State historic preservation accomplishments, and the State role in the State program review process; and tribal government burden for information collections related to the program-specific aspects of HPF grants to Tribal Historic Preservation Officers/Offices (THPOs).

This request includes information collections related to HPF grants to states and to THPOs. Section 101(b) of the National Historic Preservation Act, as amended, (16 U.S.C. 470a(b)), specifies the role of States in the NHPP Program. Section101(c), and section 301 of the Act (16 U.S.C. section 103(c), 470a(c), 16 U.S.C. 470c(c), and 16 U.S.C. 470w), specify the role of local governments in the NHPP program. Section 101(d) of the Act (16 U.S.C. 470a(d)) specifies the role of tribes in the NHPP Program. Section108 of the Act (16 U.S.C. 470h) created the HPF to support activities that carryout the purposes of the Act. Section 101(e)(1) of the Act (16 U.S.C. 470a(e)) directs the Secretary of the Interior through the NPS to "administer a program of matching grants to the states for the purposes of carrying out" the Act. Similarly, sections 101(d) and 101(e) of the Act direct a program of grants to THPOs for carrying out their responsibilities under the Act. Each year Congress directs the NPS to use part of the annual appropriation from the HPF for the State grant program and the tribal grant program. The purpose of both the HPF State grants program and the HPF THPO grants program is to assist states and tribes in carrying out their statutory role in the national historic preservation program. HPF grants to states and THPOs are program grants; *i.e.,* each State/THPO selects its own HPF-eligible activities and projects. Each HPF grant to a State/THPO has two years of fund availability. At the end of the first year, NPS employs a "Use or Lose" policy to ensure efficient and effective use of the grant funds. All 59 states, territories, and the District of Columbia participate in the NHPP Program. Almost 1,600 local governments have become Certified Local Governments (CLGs) in order to participate in the NHPP program. Approximately 54 local governments become CLGs each year. Fifty-seven Federally-recognized tribes have formally joined the NHPP and have established THPOs and tribal historic preservation offices. Typically, each year five to seven tribes join the partnership. The NPS developed the information collections associated with 36 CFR part 61 in consultation with State, tribal, and local government partners. The obligation to respond is required to provide information to evaluate whether or not State governments meet minimum standards and requirements for participation in the National Historic Preservation Program; and to meet government-wide requirements for Federal grant programs.

III. Data

OMB Control Number: 1024–0038.

Title: Procedures for State, Tribal, and Local Government Historic Preservation Programs; 36 CFR 61.

Service Form Number: None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: State, tribal, and local governments that wish to participate formally in the National Historic Preservation Program and who wish to apply for Historic Preservation Fund grant assistance.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Activities, Number of Respondents and Responses, Completion Times, and Annual Burden Hour Estimates: The net number of partners participating in this set of information collections annually is 59 states, 57 Tribes, and 1,554 CLGs.

Estimated average number of responses annually: 34,539 (grant and non-grant). This is the gross number of responses for all of the elements included in this set of information collections.

Estimated average number of State HPF grant-related applicant responses: 118 per year.

Estimated average gross number of State HPF grant-related grantee responses: 400 per year.

Estimated average gross number of State HPF grant-related responses for successful Applicants/Grantees: 518 per year.

Estimated average number of THPO HPF grant-related Applicant responses: 57 per year.

Estimated average gross number of THPO HPF grant-related grantee responses: 171 per year.

Estimated average gross number of THPO HPF application plus grant related responses: 228 per year.

Estimated average number of State and local CLG program related responses per State/CLG: 42 per year.

Estimated average gross number State and local CLG program related responses for all States/CLGs: 2,897 per year.

Estimated average minimum number of State inventory responses per State: 78 per year.

Estimated average gross minimum number of State inventory responses for all States: 4,602 per year.

Estimated average minimum number of State consultation on Federal projects responses per State: 445 per year.

Estimated average gross minimum number of State consultation of Federal projects responses for all States: 26,255 per year.

Estimated average number of other State performance reports per State: 1 per year.

Estimated average gross number of other State performance reports for all States: 25 per year.

Estimated average minimum number of State Program Reviews per State: 1 per year.

Estimated average gross minimum number of State Program Reviews for all States: 14 per year.

Estimated average gross number of responses for all non-grant collections: 33,793 per year.

The frequency of response varies depending upon the activity. In the CLG program, States and local governments participate once for the certification process, once per year for the monitoring of each CLG, once every four years for the evaluation of each CLG, and once a year on a voluntary basis for other performance reporting. Each State adds property records to its inventory and tracks the progress of consultation with Federal agencies as the information becomes available. Each State reports once a year on a voluntary basis for other performance reporting. The National Historic Preservation Act requires each State undergo a Program Review every four years. For the program-specific aspects of the HPF grants to States program, the estimated number of responses includes a "Cumulative Products Table" of projected performance in summary format, an "Organization Chart" showing the availability of appropriately qualified staff, and a (major) "Anticipated Activities List." During the grant cycle, grantees seek NPS approval once for a sub grant (via a project notification) and associated final project report. Each year, every State submits an "End of Year Report" that includes the Cumulative Products Table (which compares actual to proposed performance), a "Sources of Nonfederal Matching Share Report," a "Project/Activity Database Report," an "Unexpended Carryover Funds Table and Carryover Statement," and a "Significant Preservation Accomplishments Summary." For the program-specific aspects of the HPF grants to THPOs program, the estimated number of responses includes a grant application scope of work, a "Grants Product Summary Table," an unexpended funds carry-over statement, and a "THPO Annual Report" (a narrative summary of important accomplishments).

Estimated average time burden per respondent: The NPS estimates that the total public (State plus local) burden for the Certified Local Government (CLG) program averages 36 hours per CLG for the certification, monitoring, and evaluation of each CLG, and 45 minutes for reporting of other CLG accomplishments. The NPS estimates that the total public (State) burden averages10 minutes per Federal agency project tracked, 45 minutes per inventory record, 2 hours per reporting on other State accomplishments, and 90 hours per State Program Review. The NPS estimates the total public burden for collection not directly tied to grants is 129 hours per respondent. NPS estimates that the public burden for the HPF-supported State grant program collections of information will average11 hours per application and 19 hours per grant per year for all of the grant related collections. The combined total public burden for the HPF State grant program-related information collections would average 31 hours per successful applicant/grantee. NPS estimates that the public burden for the HPF supported THPO grant program collections of information will average 7 hours per application and 14 hours per grant per year for all of the grant-related collections. The combined total public burden for the HPF THPO grant program-related information collections would average 21 hours per successful applicant/grantee. These burden estimates are a one-year average for the two-year grants. The combined total public burden for the 36 CFR Part 61-related information collections would average 182 hours per partner. These estimates of burden include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Estimated average time burden hours per State HPF grant-related applicant response: 11 hours.

Estimated average burden hours per State HPF grant-related Grantee response: 20 hours.

Estimated total annual average burden hours per State HPF grant related respondent: 31 hours.

Estimated total annual average burden hours for all State HPF grant related responses: 1,568 hours.

Estimated average burden hours per THPO HPF grant-related Applicant response: 7 hours.

Estimated average burden hours per THPO HPF grant-related Grantee response: 14 hours.

Estimated average annual burden hours per THPO HPF grant-related Applicant/Grantee for all responses: 21 hours.

Estimated total annual average burden hours for all THPO HPF grant related respondents: 1,217 hours.

Estimated average burden hours in the CLG program per response: 50 minutes.

Estimated average burden hours in the State inventory program per response: 40 minutes.

Estimated average burden hours in the Federal agency consultation tracking program per response: 10 minutes.

Estimated average burden hours in other performance reporting per response: 2 hours.

Estimated average burden hours in the State Program Review program per response: 90 hours.

Estimated average annual burden hours per partner for all non grant related responses: 432 hours.

Estimated annual burden on all respondents for all non grant related responses: 33,565 hours.

Estimated total annual reporting burden: 36,351 hours per year.

Estimated Annual Nonhour Burden Cost: None.

IV. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request

to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 22, 2011.

Robert Gordon,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2011–7112 Filed 3–24–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0006]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1012–0009, formerly 1010–0073).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. This information collection request (ICR) was formerly approved under OMB Control Number 1010–0073. After the Secretary of the Interior established ONRR (the former Minerals Revenue Management, a program under the Minerals Management Service) on October 1, 2010, OMB approved a new series number for ONRR and renumbered our ICRs. Also, effective October 1, 2010, ONRR reorganized and transferred their regulations from chapter II to chapter XII in title 30 of the *Code of Federal Regulations* (CFR), resulting in a change in our citations. This ICR covers the paperwork requirements in the regulations under 30 CFR part 1220 (previously 30 CFR part 220). The revised title of this information collection request (ICR) is "30 CFR Part 1220, OCS Net Profit Share Payment Reporting." There are no forms associated with this information collection.

DATES: Submit written comments on or before May 24, 2011.

ADDRESSES: You may submit comments on this ICR to ONRR by any of the following methods. Please use "ICR 1012–0009" as an identifier in your comment.

- Electronically go to *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter ONRR–2011–0006, and then click search. Follow the instructions to submit public comments. The ONRR will post all comments.
- Mail comments to Armand Southall, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 61013B, Denver, Colorado 80225. Please reference ICR 1012–0009 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1012–0009 in your comments.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Mary Ann Guilinger, Audit and Compliance Management (ACM), Office of Natural Resources Revenue (ONRR), telephone (303) 231–3408, or e-mail *maryann.guilinger@onrr.gov.* For other comments or questions, contact Armand Southall, Project Management Office—Regulations, ONRR, telephone (303) 231–3221, or e-mail *armand.southall@onrr.gov.* You may contact Mr. Southall to obtain copies, at no cost, of (1) the ICR and (2) the regulations that require the subject information collection.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 1220, OCS Net Profit Share Payment Reporting.

OMB Control Number: 1012–0009.

Bureau Form Number: None.

Abstract: The Secretary of the Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands and the OCS, collect the royalties due, and distribute the funds collected in accordance with those laws. The ONRR performs the royalty management functions for the Secretary.

Public laws pertaining to mineral leases on Federal and Indian lands and the OCS are posted at *http://www.onrr.gov/Laws_R_D/PublicLawsAMR.htm.*

I. General Information

The ONRR collects and uses this information to determine all allowable direct and allocable joint costs and credits under § 1220.011 incurred during the lease term, appropriate overhead allowance permitted on these costs under § 1220.012, and allowances for capital recovery calculated under § 1220.020. The ONRR also collects this information to ensure royalties or net profit share payments are accurately valued and appropriately paid. This ICR affects only oil and gas leases on submerged Federal lands on the OCS.

II. Information Collections

Title 30 CFR part 1220 covers the net profit share lease (NPSL) program and establishes reporting requirements for determining the net profit share base and calculating net profit share payments due the Federal Government for the production of oil and gas from leases.

A. NPSL Bidding System

To encourage exploration and development of oil and gas leases on submerged Federal lands on the OCS, the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE, the former Offshore Energy and Minerals Management [OEMM] of Minerals Management Service [MMS]) promulgated regulations at 30 CFR 260—Outer Continental Shelf Oil and Gas Leasing. Also, BOEMRE promulgated specific implementing regulations for the NPSL bidding system at § 260.110(d). The BOEMRE, formerly OEMM/MMS, established the NPSL bidding system to balance a fair market return to the Federal Government for the lease of its public lands with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development and provides for sharing the risks by the lessee and the Federal Government. The NPSL bidding system incorporates a fixed capital recovery system as a means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

B. NPSL Capital Account

The Federal Government does not receive a profit share payment from an NPSL until the lessee shows a credit balance in its capital account, that is, when cumulative revenues and other credits exceed cumulative costs. Lessees multiply the credit balance by the net profit share rate (30 to 50 percent), resulting in the amount of net profit

share payment due the Federal Government.

The ONRR requires lessees to maintain an NPSL capital account for each lease under § 1220.010, which transfers to a new owner when sold. Following the cessation of production, lessees are also required to provide either an annual or a monthly report to the Federal Government, using data from the capital account.

C. NPSL Inventories

The NPSL lessees must notify ONRR of their intent to perform an inventory and file a report after each inventory of controllable materiel under § 1220.032.

D. NPSL Audits

When non-operators of an NPSL call for an audit, they must notify ONRR. When ONRR calls for an audit, the lessee must notify all non-operators on the lease. These requirements are located at § 1220.033.

III. OMB Approval

The information we collect under this ICR is essential in order to determine when net profit share payments are due and to ensure lessees properly value and pay royalties or net profit share payments.

The ONRR will request OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the inability to confirm the accurate royalty value. Proprietary information submitted to ONRR under this collection is protected, and no items of a sensitive nature are collected.

Frequency: Annually, monthly, and on occasion.

Estimated Number and Description of Respondents: 6 lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,046 hours.

All six lessees report monthly because all current NPSLs are in producing status. Because the requirements for establishment of capital accounts at § 1220.010(a) and reporting of annual capital account at § 1220.031(a) are necessary only during non-producing status of a lease, we included only one response annually for these requirements, in case a new NPSL is established. We have not included in our estimates certain requirements performed in the normal course of business, which are considered usual and customary. The following chart shows the estimated annual burden hours by CFR section and paragraph.

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR 1220	Reporting and recordkeeping requirement	Hour burden	Number of annual responses	Annual burden hours
PART 1220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases				
§ 1220.010 NPSL capital account.				
1220.010(a)	(a) For each NPSL tract, an NPSL capital account shall be established and maintained by the lessee for NPSL operations.	1	1	1
§ 1220.030 Maintenance of records				
1220.030(a) and (b)	(a) Each lessee . . . shall establish and maintain such records as are necessary.	1	6	6
§ 1220.031 Reporting and payment requirements				
1220.031(a)	(a) Each lessee subject to this part shall file an annual report during the period from issuance of the NPSL until the first month in which production revenues are credited to the NPSL capital account.	1	1	1
1220.031(b)	(b) Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee. shall file a report for each NPSL, not later than 60 days following the end of each month.	13	72	936
1220.031(c)	(c) Each lessee subject to this Part 1220 shall submit, together with the report required . . . any net profit share payment due.	Burden hours covered under § 1220.031(b).		
1220.031(d)	(d) Each lessee . . . shall file a report not later than 90 days after each inventory is taken.	8	6	48
1220.031(e)	(e) Each lessee . . . shall file a final report, not later than 60 days following the cessation of production.	4	6	24
§ 1220.032 Inventories				
1220.032(b)	(b) At reasonable intervals, but at least once every three years, inventories of controllable materiel shall be taken by the lessee. Written notice of intention to take inventory shall be given by the lessee at least 30 days before any inventory is to be taken so that the Director may be represented at the taking of inventory.	1	6	6

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR 1220	Reporting and recordkeeping requirement	Hour burden	Number of annual responses	Annual burden hours
	§ 1220.033 Audits			
1220.033(b)(1)	(b)(1) When nonoperators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the Director shall be notified of the audit call..	2	6	12
1220.033(b)(2)	(b)(2) If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit . . . The lessee shall send copies of the notice to the non-operators on the lease..	2	6	12
1220.033(e)	(e) Records required to be kept under § 1220.030(a) shall be made available for inspection by any authorized agent of DOI..	The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because MMS staff asks non-standard questions to resolve exceptions.		
Total Burden			110	1,046

Estimated Annual Reporting and Recordkeeping "Non-hour" Cost Burden: We have identified no "non-Hour cost" burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.)* provides that 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.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency to "* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. We also will post the ICR at *http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments, including names and addresses of respondents, at *http://regulations.gov.* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so.

ONRR Information Collection Clearance Officer: Rachel Drucker (202) 208–3568.

Dated: March 22, 2011.

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

[FR Doc. 2011–7140 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Standard Criteria for Ag and Urban Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The "Standard Criteria for Agricultural and Urban Water Management Plans" (Criteria) are now available for public comment. To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982 (RRA), the Bureau of Reclamation (Reclamation) developed and published the Criteria. The Criteria apply to any Water Management Plans (Plans) submitted to Reclamation as required by applicable Central Valley Project (CVP) water service contracts, settlement contracts, or any contracts that specifically invokes the Criteria. Note: For the purpose of this announcement, Water Management Plans are considered the same as Water Conservation Plans.

DATES: Submit written comments by April 25, 2011.

ADDRESSES: Please mail comments to Ms. Melissa Crandell, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California 95825, 916–978–5208, or e-mail at *mcrandell@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information or to obtain a copy of any water management plans, please contact Ms. Crandell at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices (BMPs) that shall develop Criteria for evaluating the adequacy of all Plans developed by project contractors, including those Plans required by section 210 of the RRA. In addition, according to section 3405(e)(1), the Criteria must be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices." The Criteria states that all parties (Contractors) that contract with Reclamation for water supplies (except any contractor who receives less than a five-year average of 2,000 acre-feet per year (AFY) of only municipal and industrial (urban) water, any contractor who receives any combination of irrigation and/or urban water amounting to less than a current five-year average of 2,000 AFY, and agricultural contracts under a current five-year average of 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. BMPs for Agricultural Contractors
4. BMPs for Urban Contractors
5. Plan Implementation

Reclamation will evaluate Plans based on the Criteria. The CVPIA requires Reclamation to evaluate, and revise if necessary, the Criteria every 3 years. The Criteria were last updated in 2008 and the proposed 2011 update is currently under review. Public scoping meetings to solicit comments on revision of the Criteria were held in January and February 2011. Comments will be incorporated into the finalized document. A copy can be found at the following Web site: *http://www.mp.usbr.gov/watershare/news/2011_Standard_Criteria.pdf.* A copy can also be obtained by contacting persons at the address above.

Public Disclosure: Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 18, 2011.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2011–7078 Filed 3–24–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Connected Media Experience, Inc.

Notice is hereby given that, on February 8, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et sect.* ("the Act"), Connected Media Experience, Inc. ("CMX") 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, Robin Berjon, Paris, 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 CMX intends to file additional written notifications disclosing all changes in membership.

On March 12, 2010, CMX 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 April 16, 2010 (75 FR 20003).

The last notification was filed with the Department on November 1, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 17, 2010 (75 FR 79024).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–6922 Filed 3–24–11; 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—Consortium for Energy, Environment and Demilitarization

Notice is hereby given that, on February 14, 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"), Consortium for Energy, Environment and Demilitarization ("CEED") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. 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.

Pursuant to Section 6(b) of the Act, the identities of the Parties are: Auburn University, Auburn, AL; Camgian Microsystems Corporation, Starkville, MS; Capital Technology Group, Washington, DC; Cheming North America, Chester Township, PA; Consortium for Education, Research and Technology of North Louisiana (CERT), Shreveport, LA; DKJ Technologies, Dayton, OH; E2 Project Management LLC, Rockaway, NJ; El Dorado Engineering Inc., Salt Lake City, UT; Engineering and Management Executives Inc. (EME), Alexandria, VA; Erigo Technologies, LLC, Enfield, NH; EXPLO Systems, Inc., Minden, LA; General Atomics, San Diego, CA; Gradient Technology, Elk River, MN; Group 4 Labs, Fremont, CA; HBM nCode Federal LLC, Starkville, MS; Hoboken Brownstone Company, Hoboken, NJ; IPS Custom Automation, Grand Prairie, TX; Humanistic Robotics, Inc., Bristol, PA; Malocom Pirnie, Inc., Baltimore, MD; Mississippi State University, Starkville, MS; MSE Technology Applications, Butte, MT; National Center for Defense Manufacturing and Machining, Latrobe, PA; Primis Technologies LLC, Washington, DC; Real New Energy, Alexandria, VA; Stella Group, LTD, Washington, DC; Technical Consultants,

Inc., Marshall, TX; Textronics, Inc., Wilmington, DE; Tiburon Associates, Inc., Arlington, VA; TPL Inc., Albuquerque, NM; Ultralife Corporation, Newark, NY; University of Rhode Island, Kingston, RI; and UXB International Inc., Blacksburg, VA.

The general area of CEED's planned activity is (a) to enter into a Section 845 Other Transactions Agreement (The OT Agreement) with the U.S. Army (the Government) for the funding of certain research and development to be conducted, in partnership with the Government, the consortium and other Consortium Members, to enhance the capabilities of the U.S. government and its departments and agencies in the fields of energy, environment and demilitarization; (b) participate in establishment of sound technical and programmatic performance goals based on the needs and requirements of the Government's Technology Objectives and create programs and secure funding for the Technology Objectives; (c) provide a unified voice to effectively articulate the strategically important role that renewable energy, the environment and demilitarization technologies play in current and future weapon systems; and (d) maximize the utilization of the Government and member capabilities to effectively develop critical energy, environment and demilitarization technologies that can be transitioned and commercialized.

Additional information concerning the CEED can be obtained from Mr. Darold L. Griffin, Executive Director, CEED, in care of Engineering and Management Executives, Inc., (EME), 101 South Whiting Street, Suite 204, Alexandria, VA 22304–3416, telephone (703) 212–8030, ext. 224, fax (703) 212–8035, *e-mail: eme1bmt@aol.com;* Mr. Charles McBride, President, CEED, 1140 Connecticut Avenue, NW., Suite 1050, Washington, DC 20036, telephone (202) 466–4210, fax (202) 466–4213, *e-mail: mcbride@mcbride.com;* Mr. James W. Frankovic, Chief DEMIL and Environmental Technology Division, U.S. Army Research Development and Engineering Center, Picatinny Arsenal, NJ, 07806–5000, telephone (973) 724–6239, fax (973) 724–4308, *e-mail: james.w.frankovic@us.army.mil.*

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–6921 Filed 3–24–11; 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—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on February 24, 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"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kikusui Electronics Corp., Yokohama City, Kanagawa, Japan, has been added as a party to this venture. Also, ICS Electronics, Pleasanton, CA; and BAE Systems, San Diego, CA, 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 Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on July 8, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act September 8, 2010 (75 FR 54652).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–6917 Filed 3–24–11; 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—National Warheads and Energetics Consortium

Notice is hereby given that, on February 25, 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"), National Warheads and Energetics Consortium ("NWEC") 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, Directed Energy Technologies, Inc., Sumerduck, VA; MaxPower, Inc., Harleysville, PA; Omnitek Partners, LLC, Ronkonkoma, NY; and Universal Propulsion Company, Inc., Fairfield, CA, have been added as parties to this venture. Also, NIC Industries, White City, OR; and The University of Southern Mississippi, Hattiesburg, MS, 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 NWEC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NWEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on November 30, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 22, 2010 (75 FR 80536).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–6916 Filed 3–24–11; 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—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 24, 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"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its

membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Strategic Test AB, Woburn, MA; Integrated Device Technology, Inc. (IDT), San Jose, CA; DGE Inc., Rochester Hills, MI; Tundra Semiconductor Corp., Fremont, CA; Tyco Electronics, Middletown, PA; and Crystek Corporation, Fort Myers, FL, 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 PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on September 22, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act October 25, 2010 (75 FR 65511).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–6915 Filed 3–24–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–2]

Gregory F. Saric, M.D.; Decision and Order

On November 2, 2010, Administrative Law Judge (ALJ) Timothy D. Wing issued the attached recommended decision. Thereafter, Respondent filed exceptions to the decision.

Having reviewed the record in its entirety including the ALJ's recommended decision, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

In his Exceptions, Respondent argues that "the ALJ's Recommended Decision fails to take into account certain exceptions where a suspension or stay of revocation has been granted in circumstances similar to that of Respondent's." Exceptions at 1 (citing *Stuart A. Bergman, M.D.,* 70 FR 33193 (2005)). Respondent notes that "[i]n *Bergman*[,], the ALJ delayed issuing her ruling on the Government's Motion for Summary Disposition for over two months to allow for a pending state board hearing." *Id.* Respondent states that "he is currently receiving treatment in [an] approved rehabilitation program and will likely complete his treatment next month," that "[h]e is in full compliance with the Florida Department of Health and the Florida Professionals Resource Network and will appear before the Florida Board of Medicine to have his license reinstated in early 2011." *Id.* at 1–2.

Respondent contends that a stay of this Final Order "will allow him time to complete his rehabilitation and have the state suspension of his medical license lifted" and that "such a stay * * * is within the Deputy Assistant Administrator's authority and would not disserve the public interest." *Id.* Respondent thus requests that the issuance of this Final Order be stayed for ninety (90) days [1] in order to allow him "time to have the temporary suspension of his Florida medical license lifted." *Id.*

However, more than ninety days have already passed since Respondent filed his Exceptions, and yet Respondent has submitted no evidence to this Office establishing that the Florida Board of Medicine has re-instated his medical license. Nor has Respondent even submitted evidence as to when he is scheduled to appear before the Florida Board.

Moreover, in circumstances similar to those raised by Respondent, DEA has repeatedly denied requests to stay the issuance of a final order of revocation, noting that "[u]nder the Controlled Substances Act, 'a practitioner must be currently authorized to handle controlled substances in "the jurisdiction in which [he] practices" in order to maintain [his] DEA registration.'" *Newcare Home Health Servs.,* 72 FR 42126 (2007) (quoting *Bourne Pharmacy, Inc.,* 72 FR 18273, 18274 (2007) (quoting 21 U.S.C. 802(21))). *See also* 21 U.S.C. 802(21) ("[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to * * * dispense * * * a controlled substance in the course of professional practice"); *id.* § 823(f) ("The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices."); *Bourne Pharmacy,* 72 FR at 18274 (revoking registration; "Under the CSA, it does not matter whether the suspension is for a fixed term or for a duration which has yet to be determined because it is continuing pending the outcome of a state proceeding. Rather, what matters—as DEA has repeatedly held—is whether Respondent is without authority under [state] law to dispense a controlled substance.").

Thus, Respondent's reliance on *Bergman* is misplaced.[2] As I further explained in *Newcare,* "[i]t is not DEA's policy to stay proceedings under section 304 while registrants litigate in other forums." 72 FR at 42127 (citing *Bourne Pharmacy,* 72 FR at 18273; *Oakland Medical Pharmacy,* 71 FR 50100 (2006); *Kennard Kobrin, M.D.,* 70 FR 33199 (2005)). This is so, because in addition to the CSA's requirement that a practitioner hold state authority in order to be registered, whether Respondent's state license will be re-instated is entirely speculative. Nor is there any evidence in the record as to when such action may occur.

Therefore, I adopt the ALJ's recommendation that Respondent's registration be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BS5109889, issued to Gregory F. Saric, M.D., be, and it hereby is, revoked. I further order that any pending application of Gregory F. Saric, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective April 25, 2011.

Dated: March 10, 2011.

Michele M. Leonhart,

Administrator.

Larry P. Cote, Esq., for the Government.
George F. Indest, III, Esq., for Respondent.

Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

Administrative Law Judge Timothy D. Wing. On September 9, 2010, the Deputy Assistant Administrator, DEA, issued an Order to Show Cause (OSC) of

[1] While Respondent requested that the Deputy Assistant Administrator stay the issuance of the Final Order, given that the Deputy Assistant Administrator has no authority to issue the Agency's Final Order, I address the request as if it was directed to this Office.

[2] While in *Bergman,* the ALJ stayed the proceeding until after the registrant's state board hearing, the decision of the Agency, which revoked his registration, did not endorse this practice. Moreover, the decision expressly noted that "[d]enial or revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement." 70 FR at 33193 (collecting cases).

DEA COR BS5109889, dated September 9, 2010, and served on Respondent on September 15, 2010. The OSC provided notice to Respondent of an opportunity to show cause as to why the DEA should not revoke Respondent's DEA COR BS5109889 pursuant to 21 U.S.C. 824(a)(3), on the grounds that Respondent lacks authority to handle controlled substances in Florida, the state in which he maintains his DEA registration. On October 8, 2010, Respondent, through counsel, in a letter dated October 5, 2010, timely requested a hearing with the DEA Office of Administrative Law Judges (OALJ).

I issued an Order for Prehearing Statements on October 13, 2010. On October 18, 2010, the Government filed a Motion for Summary Disposition. On October 18, 2010, I issued an order staying the proceedings pending the resolution of the Government's motion and directing Respondent to reply to the Government's motion, if at all, by October 25, 2010. On October 21, 2010, Respondent, through counsel, filed a Motion for Enlargement of Time and Motion to Require the Government to Serve Pleadings Via Facsimile. I granted that motion on October 21, 2010, and granted Respondent until November 1, 2010, to respond to the Government's motion.

On October 29, 2010, Respondent timely filed his response to the Government's Motion for Summary Disposition.

II. The Parties' Contentions

A. The Government

In support of its motion for summary disposition, the Government asserts that on August 24, 2010, the State of Florida Board of Medicine (Board) issued a final order indefinitely suspending Respondent's Florida Medical license, and that Respondent consequently lacks authority to possess, dispense or otherwise handle controlled substances in Florida, the jurisdiction in which he maintains his DEA registration. The Government notes that in Respondent's request for a hearing, Respondent admits that he is currently without a Florida medical license. (Gov't Mot. Sum. Disp. at 1 (citing Resp't Hg. Req. dated October 5, 2010, at 2.)) The Government contends that such state authority is a necessary condition for maintaining a DEA COR and therefore asks that I summarily recommend to the Deputy Administrator that Respondent's COR be revoked. In support of its motion, the Government attaches the Board's final order referred to above, marked for identification as Exhibit A.

B. Respondent

Respondent opposes summary disposition, in sum and in substance "because he is in the process of cooperating completely with the Florida Board of Medicine, Department of Health, to have its temporary suspension of his license lifted and we expect this to happen in the near future." (Resp't Hg. Req. at 2; *see also* Resp't Opp'n Sum. Disp. at 2 ¶¶ 4–5.) Respondent states that the revocation of his DEA COR "would cause him tremendous hardship upon his return to the active practice of medicine" (Resp't Opp'n Sum. Disp. at 2 ¶ 6) and seeks to proceed with the pending administrative proceedings.

In the alternative, Respondent argues that 21 U.S.C. 824(a)(3) allows the suspension of a DEA registration as an alternate remedy to revocation, and that "suspension is a far more appropriate remedy given the facts of this matter and the temporary nature of the suspension of the Respondent's medical license." (Resp't Opp'n Sum. Disp. at 1 ¶¶2–3.) Respondent therefore argues that if summary disposition is proper, then I should not recommend revocation but instead "order the immediate suspension of Respondent's DEA registration until such time as his Florida medical license has been reinstated." (*Id.* at 2 ¶8.)

III. Discussion

At issue is whether Respondent may maintain his DEA COR given that Florida has suspended his state license to practice medicine, even though the suspension may be temporary.

Under 21 U.S.C. 824(a)(3), a practitioner's loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration. Accordingly, this agency has consistently held that a person may not hold a DEA registration if he is without appropriate authority under the laws of the state in which he does business. *See Scott Sandarg, D.M.D.,* 74 FR 17,528 (DEA 2009); *David W. Wang, M.D.,* 72 FR 54,297 (DEA 2007); *Sheran Arden Yeates, M.D.,* 71 FR 39,130 (DEA 2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (DEA 1993); *Bobby Watts M.D.,* 53 FR 11,919 (DEA 1988).

Summary disposition in a DEA suspension case is warranted even if the period of suspension of a respondent's state medical license is temporary, or even if there is the potential for reinstatement of state authority because "revocation is also appropriate when a state license had been suspended, but with the possibility of future reinstatement." *Stuart A. Bergman, M.D.,* 70 FR 33,193 (DEA 2005); *Roger A. Rodriguez, M.D.,* 70 FR 33,206 (DEA 2005).

It is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, under the rationale that Congress does not intend administrative agencies to perform meaningless tasks. *See Layfe Robert Anthony, M.D.,* 67 FR 35,582 (DEA 2002); *Michael G. Dolin, M.D.,* 65 FR 5661 (DEA 2000); *see also Philip E. Kirk, M.D.,* 48 FR 32,887 (DEA 1983), *aff'd sub nom. Kirk v. Mullen,* 749 F.2d 297 (6th Cir. 1984). *Accord Puerto Rico Aqueduct & Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994).

In the instant case, the Government asserts that Respondent's Florida medical license is presently suspended. (*See* Gov't Mot. Sum. Disp. at 1.) This allegation is confirmed by Government Exhibit A, as well as Respondent's own admission: In predicting that the suspension of his Florida medical license will soon be lifted, Respondent by necessity concedes the fact of its suspension. (Resp't Hg. Req. dated October 5, 2010, at 2; Resp't Opp'n Sum. Disp. at 2 ¶4.) I therefore find there is no genuine dispute as to any material fact, and that substantial evidence shows that Respondent is presently without state authority to handle controlled substances in Florida. Consequently, I conclude that summary disposition is appropriate.

Respondent's assertion that losing his DEA COR would cause him hardship does not alter this conclusion. Respondent cites no authority, and a review of agency precedent reveals none, for the contention that potential hardship to a registrant may prevent revocation of a DEA COR pursuant to 21 U.S.C. 824(a)(3) where the registrant lacks state authority to handle controlled substances.

In the alternative, Respondent argues that even if revocation is warranted, Section 824(a)(3) permits me to recommend suspension instead of revocation. The crux of Respondent's argument turns on the disjunctive language of § 824(a)(3), which provides that a registration "may be suspended *or* revoked * * *" where a registrant lacks state authority to handle controlled substances. *Id.* (emphasis supplied). Respondent cites no authority in support of his reading of § 824(a)(3).

Respondent's interpretation of § 824(a)(3) ignores the weight of settled, contrary agency precedent that has consistently imposed revocation and not suspension on similar facts. *See Stuart*

A. Bergman, M.D., 70 FR 33,193 (DEA 2005) (denying respondent's request for temporary suspension and granting motion for summary disposition where respondent lacked state authority); *see also Roy Chi Lung,* 74 FR 20,346, 20,346 (DEA 2009) ("Respondent * * * lack[s] authority to handle controlled substances in California * * * Respondent is therefore *not entitled* to maintain his DEA registration.") (emphasis supplied); *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (DEA 2006) ("DEA does not have statutory authority under the Controlled Substances Act to maintain a registration if the registrant is without state authority to handle controlled substances in the state in which he practices."). *See generally* 21 CFR 1301.01(17) (2010) (defining "individual practitioner" as a person, other than a pharmacist, pharmacy or institutional practitioner, possessing state authority to dispense a controlled substance in the course of a professional practice). Under the circumstances discussed above, I conclude that further delay in ruling on the Government's Motion for Summary Disposition is not warranted.

Recommended Decision

I grant the Government's motion for summary disposition and recommend that Respondent's DEA COR BS5109889 be revoked and any pending applications denied.

Dated: November 2, 2010

Timothy D. Wing,

Administrative Law Judge.

[FR Doc. 2011–7016 Filed 3–24–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–35]

Robert L. Dougherty, M.D.; Denial of Application

On March 16, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Robert L. Dougherty, M.D. (Respondent), of Poway, California. ALJ Ex. 1. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a practitioner, on the ground that his "registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f)." *Id.* at 1.

The Show Cause Order alleged that on October 27, 1995, the DEA Deputy Administrator (DA) issued a Final Order revoking Respondent's registration based on his prescribing of controlled substances to three patients. *Id.* (citing 60 FR 55047). More specifically, the Show Cause Order alleged that the DA had "found that [Respondent's] prescribing of controlled substances to Patient #1 'on demand,' 'virtually upon request,' with 'virtually no scrutiny' and with 'virtually no records or monitoring' demonstrated a gross lack of judgment and showed that some of the prescriptions issued were outside the course of professional practice." *Id.*

With regard to Patient #2, the Show Cause Order alleged that the DA "found that * * * Respondent's prescribing of controlled substances to an admitted drug abuser showed a disregard of the requirements for detailed attention to individual patient behavior necessary for the dispensing of controlled substances." *Id.* With regard to Patient #3, the Show Cause Order alleged that the DA found that Respondent's "prescribing of an excessive number of refills of controlled substances over a six month period, without requiring a clinical examination or visit, demonstrated a reckless disregard for medical standards in dispensing controlled substances and violations of Federal regulations and state law[,]" and that he "had violated Federal and state record-keeping requirements for controlled substances." *Id.*

Finally, the Show Cause Order alleged that on June 25, 1997, the Medical Board of California (MBC) issued a decision which "severely criticized [Respondent's] treatment of [P]atient #1." *Id.* The Order alleged that the MBC had found that Respondent "had engaged in repeated negligent acts and had demonstrated incompetence in [his] treatment of the patient[,]" and that "[t]his misconduct included prescribing controlled substances to an obvious drug addict." *Id.* at 1–2.

Respondent requested a hearing on the allegations, and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJ). Following pre-hearing procedures, on March 10, 2010, an ALJ conducted a hearing on the matter in San Diego, California, at which both parties called witnesses to testify and the Government introduced documentary evidence. Thereafter, both parties filed briefs containing their proposed findings of fact, conclusions of law, and argument.

On June 9, 2010, the ALJ issued her recommended decision (also ALJ). Therein, the ALJ found that the Government had "met its prima facie burden." ALJ at 22. However, the ALJ reasoned that all of the facts and circumstances should be considered including that Respondent's "mistakes" involved only "a very small portion of his patients," that one of the patients was a relative who has since died and that this "decreases the likelihood that similar circumstances would reoccur," and that Respondent's "mis-judgments were well intentioned." *Id.* at 22–24. Next, the ALJ reasoned that "there was controversy in the medical community with regards to his prescribing practices, and that his methods have since been adopted by the FDA, though not necessarily DEA," and that his prescribing methods, while "found to be objectionable over ten years ago * * * may, according to the record, arguably not be objectionable now." *Id.* at 24. The ALJ thus concluded that "the circumstances surrounding his prescribing practices have changed." *Id.*

Finally, the ALJ noted that in the 1995 Final Order, the Agency had made four summarized findings.[1] *Id.* at 25. While the ALJ noted that Respondent did not "completely acknowledge his past problems with refill practices with regards to Patient #2," she found it relevant that the ALJ who conducted the earlier hearing had "recognized discrepancies in the Government's evidence relating to how many refills were actually authorized." *Id.* With respect to the Agency's finding that Respondent failed "to act in a timely manner upon, and to take responsibility for, receipt of information given to him or to his staff concerning the forged prescriptions of Patient #3," the ALJ reasoned that "the record demonstrates that [he] received information about possibly forged prescriptions, made inquiries, questioned the patient, was deceived, and ultimately stopped prescribing to the patient." *Id.* at 26. Finally, with respect to Patient #1, the ALJ characterized the Agency's finding as that he had maintained an "inadequate treatment record." *Id.* at 26. Reasoning that "[t]here is no question that the Respondent demonstrated remorse with regards to his record-keeping," and that the "DA's summarized findings focused on record-keeping," the ALJ concluded that

[1] As the basis for rejecting the ALJ's recommended sanction of a one-year suspension and revoking Respondent's registration, the DA cited four findings: (1) Respondent's "failure to acknowledge the need for adequate recordkeeping to insure [sic] that controlled substances are not diverted"; (2) his "lack of remorse concerning his * * * unlawful recordkeeping and refill practices"; (3) his "failure to act in a timely manner upon, and to take responsibility for, receipt of information given him or to his staff concerning the forged prescriptions of Patient #3"; and (4) his "lack of acknowledgement that the inadequate treatment record of Patient #1 could have ultimately jeopardized that patient's welfare." 60 FR at 55051.

Respondent had generally accepted responsibility.[2] *Id.*

The ALJ thus concluded that while she did not "condone or minimize the seriousness of * * * Respondent's prior misconduct[,] * * * the circumstances, which existed at the time of the prior proceeding, have changed sufficiently to support a conclusion that Respondent's registration would be in the public interest." *Id.* at 28. While acknowledging that "Respondent failed to express remorse for the entirety of his prescribing practices," she recommended that I grant him a restricted registration. *Id.*

Thereafter, the Government filed Exceptions to the ALJ's recommended decisions. The record was then forwarded to me for Final Agency Action.

Having considered the record as a whole (including the ALJ's recommended decision), I agree with the ALJ's finding that the Government established a *prima facie* case to deny Respondent's application. However, I reject the ALJ's finding that Respondent has successfully rebutted the Government's *prima facie* case and will deny his application. As ultimate fact finder, I make the following findings of fact.

Findings

Respondent is a physician licensed by the Medical Board of California, GX 1, at 2. Respondent, who has been licensed since 1957, is board certified in Family Practice. Tr. 89. Respondent has taught pain management to Army hospital corpsmen as well as to U.S. Park Rangers, and served at two MASH hospitals in Korea. *Id.* at 90–91, 97.

The First DEA Proceeding

Respondent previously held a DEA Certificate of Registration as a practitioner. *Robert L. Dougherty, Jr., M.D.,* 60 FR 55047 (1995) (GX 7). However, on July 29, 1993, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause which proposed the revocation of the registration he then held based on five separate allegations. *Id.* Respondent requested a hearing, and in July 1994, an Agency ALJ conducted a four-day hearing at which Respondent was represented by counsel and at which he testified and introduced documentary evidence. *Id.* Following the hearing, Respondent (and the Government) submitted briefs containing proposed findings of fact, conclusions of law, and argument. *Id.* Thereafter, the ALJ issued his decision, which found most of the allegations proved and recommended that Respondent's registration be suspended for a period of one year. *Id.* The Government filed Exceptions and Respondent filed a Response to the Government's Exceptions. *Id.* The record was then forwarded to the DA, who, on October 27, 1995, issued the Agency's Decision and Final Order which contained extensive factual findings. *Id.*

With respect to Patient #1, the DA credited the testimony of an expert in pain management who concluded that while Respondent's initial treatment of the patient was medically appropriate, "after Patient #1 moved into the Respondent's home in early 1990, the notations in his chart became sporadic, ending on December 3, 1991." 60 FR at 55048. Based on the Expert's testimony, the DA further found that "Respondent's standard of care as to Patient #1, to include a lack of a medical record showing [his] treatment, and the excessive amounts of prescribed medication between January 1990 and February 1992, 'fell below community standards for the average physician.'" *Id.* However, the DA also found "that the evidence 'does not support that the doctor was prescribing for an illegitimate purpose,' or that 'he was doing something dishonest,' but rather that such prescribing was not 'appropriate treatment' in this case." *Id.*

With respect to Patient #1, the DA further noted Respondent's testimony that "he altered his patient record practices in the case of Patient #1 after he moved into his home because he now saw him regularly and was able to closely observe him on a daily basis." *Id.* Respondent also conceded that he had provided samples of Xanax to Patient #1, but did not record doing so in his chart. *Id.* Respondent further admitted that he had prescribed schedule II drugs between April 1991 and March 1992, but generally did not record this in his chart. *Id.*

Finally, the DA found "that from mid-December 1991 to April 1992, Patient #1" would visit Respondent's office "to pick up prescriptions" but "'rarely ever' went into an examination room," and that "he would often call the Respondent's office and leave a message telling the Respondent what controlled substances to bring home." *Id.* The DA again credited the Expert's testimony that "such patient and physician behavior concerned him, because the patient's demands seemed to replace the physician's judgment." *Id.*

Concluding that Respondent dispensed to Patient #1 "on demand, virtually upon request, with virtually no security, and with virtually no records or monitoring in the early 1990s," as well as that it was his "practice of giving Patient #1 Xanax samples without documenting" this in his chart, the DA adopted the ALJ's conclusion that "Respondent's prescribing and dispensing to Patient #1 was 'outside the context of the Respondent's usual professional practice.'" *Id.* at 55049.

With respect to Patient #2, the DA found that "[o]n October 24, 1990, the Respondent issued [her] an original prescription for 30 dosage units of Vicodin, [that] he saw this patient again on November 14, 1990, and although [he] did not see this patient again until May 1, 1991, he authorized more than twenty refills from the October 24, 1990, prescription for Vicodin," the latter being a schedule III controlled substance. *Id.* at 55048. The DA also found that on October 24, 1990, Respondent "issued Patient #2 an original prescription for Darvocet-N 100 * * * and between that date and May 1, 1991, he authorized more than twenty refills of Darvocet, a medication containing propoxyphene napsylate, a Schedule IV controlled substance." *Id.*

The DA thus concluded that "the excessive number of refills [Respondent] provided Patient #2 over a six-month period of time without requiring a clinical examination or visit, demonstrates a reckless disregard for medical standards in dispensing controlled substances." *Id.* at 55049. Based on his finding that between October 24, 1990 and May 1, 1991, Respondent had authorized original prescriptions for both Vicodin and Darvocet-N, as well as more than twenty refills for each drug, the DA also concluded that Respondent had violated 21 CFR 1306.22(a), which prohibited (then as now) both the filling or refilling of a prescription for a schedule III or IV controlled substance "more than six months after the date on which such prescription was issued," as well as the refilling of a prescription "more than five times" during this period, after which a new prescription must be issued. *Id.* at 55050. The DA also concluded that Respondent violated Cal. Health and Safety Code § 11200, which provided that "[n]o person shall dispense or refill a controlled substance prescription more than six months after the date thereof or cause a prescription for a Schedule III or IV substance to be refilled in an amount in excess of a 120 day supply, unless renewed by the prescriber." *Id.*

As for Patient #3, the DA found that Respondent and the Government had stipulated that Patient #3 had forged prescriptions under Respondent's name on seven different dates between February 3 and April 21, 1992, resulting

in "a total of 396 dosage units of Lortab," a schedule III controlled substance, being dispensed to Patient #3. *Id.* at 55049. The DA also found that Respondent was notified that Patient #3 was forging prescriptions on at least three occasions between January 1990 and April 1992. *Id.* These included: (1) A January 1990 incident in which "a pharmacist contacted the Respondent's office about a forged prescription from Patient #3," (2) a February 6, 1992 letter "written to * * * Respondent informing him of a suspicious prescription written to Patient #3 despite Respondent's office's verification of the prescriptions which the pharmacist had filled," and (3) another pharmacist notifying Respondent in April 1992 "about forged prescriptions for a controlled substance for Patient #3." *Id.* The DA found that notwithstanding that Respondent had received this information, he "authorized the refills and continued to prescribe Lortab for Patient #3." *Id.*

The DA also found that Patient #3 had stated during an interview that "he had been a patient of the Respondent's from July 1990 to about June 1992, that he had told the Respondent of his past drug addiction problems, but that the Respondent continued to prescribe Lortab" to him. *Id.* Patient #3 "also stated that the Respondent talked to him about forged prescriptions, that he had denied forging the prescriptions, but that the Respondent had told him that he did not believe his denial. However, the Respondent continued prescribing Lortab even after this conversation." *Id.* Patient #3 further "stated that in June 1992 he stopped receiving treatment from the Respondent and that he went into a rehabilitation treatment center for 90 days to overcome his addiction to Lortab." *Id.*

The DA noted Respondent's testimony that "he believed Patient #3 had valid complaints of pain stemming from a history of back pain, that he never received a copy of a forged prescription regarding Patient #3, [and] that he did not see such a copy until June 1992, when he then realized Patient #3 had been deceiving him." *Id.* The DA also noted the Expert's opinion that "Respondent's prescribing practices were excessive with poor documentation of the need for those narcotics, [and] demonstrate[d] a lack of usual care and precaution in dealing with these kinds of prescriptions." *Id.*

The DA concluded that "the dispensing of a controlled substance in the quantities prescribed to Patient #3, a patient known to the Respondent as an admitted drug abuser, even after receiving warnings of forged prescriptions, demonstrates at least a lack of precaution, and more probably a disregard of the requirements for detailed attention to individual patient behavior necessary for the dispensing of controlled substances." *Id.* The DA further observed that this "create[d] grave doubt as to * * * Respondent's prescription practices to known drug abusers," and that while Respondent had been warned about Patient #3's conduct, there was no evidence that he had "ceased prescribing controlled substances to this patient until he obtained and documented accurate information about the amounts of such substances actually received by Patient #3 through the use of these forged prescriptions." *Id.* at 55051.

In addition, the DA found that Respondent had violated various recordkeeping requirements of both Federal and State law. *Id.* at 55050. These included 21 U.S.C. 827(a)(3), which requires that "every registrant * * * dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each substance * * * received, sold, delivered, or otherwise disposed of by him"; and subsection 827(b), which requires that records "contain such relevant information as may be required by, regulations of the Attorney General," that the records for narcotics "be maintained separately from all other records of the registrant" and those for non-narcotic controlled substances "be in such form that information required by the Attorney General is readily retrievable from the ordinary business records of the registrant"; and that records "be available for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General." 21 U.S.C. 827(b) (quoted at 60 FR 55050) (also citing 21 CFR 1304.04(a) and 1304.24; Cal. Health and Safety Code §§ 11190–92).[3] In addition, the DA found that between April 16 and July 23, 1990, Respondent had ordered Demerol and morphine on ten occasions, which are schedule II controlled substances, from a local pharmacy, but on April 24, 1992, he "was unable or unwilling to produce" the DEA Order Forms, even though under Federal regulations he was required to maintain these forms "separately from all other records" and to keep them "available for inspection for a period of 2 years." 60 FR at 55050. Summarizing his findings, the DA concluded that Respondent had shown "a blatant disregard for statutory provisions" which exist "to prevent the diversion of controlled substances to unauthorized individuals." *Id.*

Finally, the DA found (again based on the Expert's testimony) that Respondent had failed "to maintain accurate, current, and complete patient treatment records" for all three patients. *Id.* This was deemed actionable as "such other conduct which may threaten the public health or safety" (factor five), because if "Respondent suddenly fell ill, [the] treatment [of his patients by another physician] could be seriously impaired by * * * Respondent's shoddy documentation." *Id.* at 55050–51 (citation omitted).

The Medical Board Proceeding

On dates not established in the record, the MBC filed an Accusation, as well two Supplemental Accusations against Respondent. GX 8, at 3. The Accusation charged, *inter alia,* that he had violated California law by engaging in "repeated acts of clearly excessive prescribing," as well as that he had "dispen[sed] or furnish[ed] * * * dangerous drugs without a good-faith prior examination and medical indication therefor." *Id.* at 3 (citing Cal. Bus. & Prof. Code §§ 725, 4211). The Accusation also charged Respondent with violating state record-keeping requirements for schedule II controlled substances, *id.* (citing Cal. Health & Safety Code § 11190), as well having violated "various sections of Federal law, contained in the Code of Federal Regulations (CFR) relating to dispensing controlled substances." *Id.* All of the charges involved Respondent's "administration of certain drugs" to Patient #1. *Id.* at 4.

In May 1997, a State ALJ conducted a hearing, which lasted seven days. *Id.* at 2. In his Decision, the State ALJ made extensive findings regarding Respondent's prescribing practices between November 1991 and September 1995, which he characterized as "a graphic illustration of a practice without a plan" and as "a pattern of excess." *Id.* at 14–15. For example, the State ALJ found that "[d]uring January 1992, [R]espondent prescribed 360 Demerol 100 mg tablets, 200 Valium 10 mg tablets, 500 Percocet tablets, and 220 Xanax 2 mg tablets" to Patient #1. *Id.* at 15.

As other examples, the State ALJ found that between January and March

[2] The ALJ also observed that the MBC's decision, which found that Respondent's prescribing to Patient #1 showed "a 'pattern of excess' resulting in 'irrational polypharmacy,' * * * also states [that]: '[t]he most powerful tool in reducing polypharmacy is an accurate medical record. It is thus easy to see why the out of control polypharmacy [] existed.' " ALJ at 26 (citation omitted). The ALJ thus reasoned that these statements "reflect primarily on the Respondent's past-poor record-keeping[,]" for which he had demonstrated remorse. *Id.*

1994, Respondent prescribed to Patient #1: 672 Lorcet 10/650, 240 diazepam 10 mg, 56 Xanax 2 mg, 360 amitriptyline 50 mg, and 56 alprazolam 2 mg; and that between January and March 1995, he prescribed to Patient #1: 672 Lorcet 10/650, 240 diazepam 10 mg, 720 amitriptyline 50 mg, 240 alprazolam 2 mg, and 90 Prelu-2 105 mg (phendimetrazine). *Id.* The ALJ further found that between July and September 1995, Respondent prescribed to Patient #1: 784 Lorcet 10/650, 360 diazepam 10 mg, 720 amitriptyline 50 mg, 120 alprazolam 2 mg, and 90 Prelu-2 105 mg. *Id.* The ALJ also found that Respondent maintained no medical records on Patient #1 during 1993, and that he had a total of ten chart notes on him for the years 1994 through 1996.[4] *Id.*

The State ALJ characterized Respondent's prescribing practices "as irrational pharmacy," further explaining that "[p]olypharmacy is the prescription, administration or use of more medications than are clinically indicated." *Id.* at 16. While acknowledging that Respondent "prescribed pain pills and the patient had pain," as well as that "the patient was anxious and received anxiolytics," the State ALJ observed that Patient #1 "really ceased being treated in a fully engaged professional manner long ago" as Respondent had "prescribed a mixture of narcotic, anti-depressant, anti-anxiety and anti-inflammatory medications without any serious attempt to discern efficacy, side effects or synergy." *Id.* at 15–16.

Noting that "[t]he most powerful tool in reducing polypharmacy is an accurate medical record," the State ALJ reasoned that it was "easy to see why the out of control polypharmacy of the 1990's existed." *Id.* at 16. The ALJ further found that "[t]otally absent from [Respondent's] care and treatment of [Patient #1] was control, monitoring and periodic assessment," and that "[f]rom 1990 to 1996, almost all of [his] prescribing to [Patient #1] took place in the absence of a legitimate physical examination." *Id.*

The State ALJ made additional findings based on the expert testimony of a practitioner in pain management as to the standard of care in treating a chronic pain patient. *Id.* at 20–21. While the State's Expert testified "that it is not necessarily a breach of the standard of care to prescribe potent narcotic analgesics to an addict," he further explained that "[h]ow a physician goes about this and how such a plan is monitored is the key to whether the patient is engaged in improper drug seeking behavior or properly receiving medications for a medical condition." *Id.* at 21.

The State's Expert testified and the ALJ found that "if a patient with serious and legitimate back pain admits to addiction to opioids," the "treating physician should always have a psychiatrist or psychologist working with him for adjunctive evaluation and necessary treatment." *Id.* at 21. Moreover, "[t]he patient should be required to sign a narcotic contract that specifically spells out the terms and conditions under which the physician agrees to provide pain medication to the patient and what is expected from the patient in return." *Id.* The ALJ further found that "[t]he physician should explore other [treatment] modalities besides narcotics" to see if they will "lessen the need for narcotics." *Id.* While acknowledging that narcotics may still be necessary after trying other treatment modalities, the Expert testified that "the prescribing must be monitored extremely closely [and] [t]here must be very strict limitations placed on the patient to discourage drug seeking behavior." *Id.*

The State ALJ found that the Expert "established that [R]espondent was guilty of excessive prescribing to [P]atient [#1] based on the extremely large quantity of drugs prescribed, the toxicity of the medications and the absence of good faith examinations."[5] Id. The State ALJ further found that while Patient #1 "lived in pain," "[t]he evidence is overwhelming that [Patient #1] abused prescription medication over an extended period of time, that his abuse was manifest and apparent to those around him and that [R]espondent could not have been ignorant of this." *Id.* at 24. The State ALJ then noted that while "[i]t appears that [R]espondent was motivated by a desire to alleviate [Patient #1's] suffering," Respondent "fail[ed] to acknowledge any errors." *Id.; see also id.* at 33 (Respondent "fails to acknowledge any responsibility for any of his actions. He blames others or completely excuses his actions.").

The State ALJ thus found that Respondent had violated numerous provisions of both state and Federal law including, *inter alia,* that "[h]e prescribed medication without a good faith examination and medical indication," that "he excessively prescribed controlled substances," and that he had violated 21 CFR 1306.04(a), which requires that "a prescription for a controlled substance 'must be [issued] for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.' "[6] *Id.* at 27–28 (citing Cal. Bus. & Prof. Code § 2242, Cal. Health & Safety Code § 11153, and 21 CFR 1306.04(a)). The State ALJ further found that Respondent had violated DEA regulations requiring that he maintain a biennial inventory of controlled substances, that "he failed to maintain all required DEA 222 order forms" for schedule II controlled substances, and that "he failed to maintain all required controlled substances records." *Id.* (citing 21 CFR 1304.11–1304.13; 1305.03; 1305.13; 1304.21; 1304.24).

Thereafter, the MBC adopted the ALJ's decision. *Id.* at 1. Respondent's license was revoked, but the revocation was stayed and he was placed on probation for ten years. *Id.* at 35. In addition, Respondent's license was suspended "for 180 days" and he was ordered to take a course in prescribing practices; he was also ordered to take an additional Continuing Medical Education course for each year of his probation. *Id.*

Respondent testified that he completed the probationary period imposed by the MBC and did not have any violations. Tr. 117–18. He further maintained that he had "substantially" improved his charting practices. *Id.* at 118.

The Current Proceeding

At the hearing in this matter, Respondent testified as both a witness for the Government and himself. The Government asked him a series of questions regarding the findings of both the 1995 DEA Final Order and the MBC.

With respect to Patient #1, the Government asked Respondent whether he agreed with the DA's finding that his dispensing of controlled substances "between January 1990 and February 1992, was highly irregular in the medical profession and was excessive?"

[4] The State ALJ also made findings regarding Respondent's prescriptions to Patient #1 during the months of November and December 1991, as well as January through March 1993. *See* GX 8, at 14–15.

[5] The State's Expert also identified five "examples of gross negligence by [R]espondent" in his prescribing to Patient #1." *Id.* at 20–21. These included that "the dose of [D]emerol * * * was dangerous and potentially toxic," "the dose of acetaminophen," which is contained in Lorcet, "was very excessive and toxic to the patient's liver," "the lack of record-keeping is virtually unheard of in terms of this degree of prescribing," "the lack of monitoring given the patient's condition and history of substance abuse," and "the lack of use of other modalities besides narcotics to treat the patient's pain." *Id.*

[6] The State ALJ also found that Respondent had committed unprofessional conduct under several provisions of California law. GX 8, at 26–27.

Tr. 15. Respondent answered: "No, I do not." *Id.*

Next, the Government asked Respondent whether he agreed with the DA's finding that his management of Patient #1 "demonstrated behavior such that the patient's demands seemed to replace your judgment." Tr. 15. Respondent answered: "No, I do not."

The Government then asked Respondent whether he agreed with the DA's finding that he "dispensed controlled substances to Patient Number 1 basically on demand?" Tr. 16. Respondent again answered: "No, I do not." *Id.* at 16.

Next, the Government asked Respondent whether he agreed with the DA's finding that, during "the early 1990's," he had "dispensed controlled substances to Patient Number 1 * * * with virtually no records or monitoring?" *Id.* at 17. Respondent answered: "My records were far less thorough than they should have been. I know that now and in the future will be much more cautious." *Id.*

With respect to Patient #3, the Government asked Respondent whether he agreed with the DA's finding that his "conduct in continuing to prescribe to [him], despite his use of forged prescriptions, showed a carelessness inappropriate for continued registration?" *Id.* at 17. Respondent answered:

> In the first place, this was not what I would call a forgery although it was close. What happened was the patient got a reasonable prescription from me, ran it through a copy machine, took both prescriptions to pharmacies so that both prescriptions looked extremely genuine, and yet I know I'd only written one. I don't know if that is legally a forgery or not, but it's very similar to that. * * * I did not think that it was a forgery. Forgeries are usually very obvious to pharmacists who are familiar with my prescriptions and signature. So I was blindsided on that. And I did subsequently dismiss that patient from my practice when there were increasing questions about what was going on.

Id. at 17–18.

The Government then asked Respondent if he agreed with the DA's "finding that [he was] careless in continuing to prescribe to * * * Patient Number 3?" *Id.* at 18. Respondent answered: "No, I do not, but I had not seen the prescription that is now being called a forgery until much later." *Id.*

As a follow-up, the Government asked Respondent if he agreed with the finding that his "continued prescribing to this patient showed more probably a disregard of the requirements for detailed attention to individual patient behavior necessary for the dispensing of controlled substances?" *Id.* at 19. Respondent answered:

> I find that rather strange. I don't know what behavior is being referred to or conduct at that point. Quite simply, the patient came to me complaining of severe headaches, appeared to be having severe headaches, and was prescribed, but there became increasing questions about some things that were going on. And finally, I just terminated his treatment.

Id.

With respect to Patient #2, the Government noted the DA's finding that "over a six-month period of time, [Respondent's] prescribed [an] excessive number of refills [and] showed a reckless disregard for medical standards in dispensing controlled substances." *Id.* The Government then asked Respondent whether he agreed that he "showed a reckless disregard for medical standards in dispensing controlled substances with regard to Patient Number 2?" *Id.* at 19–20. Respondent answered: "No, I do not." *Id.* at 20.

Testifying on his own behalf regarding Patient #2, Respondent stated that he understood that he could not "legally write on the prescription itself more than five refills." *Id.* at 121. He then testified: "I don't think I ever did write more than five [refills] on Ms. [J.]" *Id.*

The Government then objected that Respondent's counsel was trying to re-litigate the findings as to Patient #2. *Id.* Respondent's counsel acknowledged that this was "true," stating that "I am pointing out the discrepancy in the ALJ's findings versus the final revocation order," and that "[t]here are discrepancies that I think that need to be illuminated." *Id.* at 121–22.

While the ALJ initially expressed the opinion that Respondent was "trying to revisit these facts which are facts that have already been adjudicated," *id.* at 122, Respondent's counsel replied that "the conclusions [of the 1995 Order] aren't support by the facts, and the facts are in the record," and that his line of questioning was only being done to show that when Respondent answered the Government's questions by stating "that he disagreed with the conclusion," this was "in fact, supported by the record." *Id.* The ALJ then agreed to allow Respondent's counsel to ask him questions to clarify "why he disagree[d] with the final order." *Id.* at 123.

Next, Respondent's counsel read a portion of the prior DEA ALJ's recommended decision which noted that there was "arguably * * * conflicting evidence" as to whether Respondent had issued more than five refills to Patient #2 between November 14, 1990 and May 1, 1991. *Id.* at 125. Respondent's counsel then asked Respondent whether he "agree[d] that the evidence that was presented and, in fact, the footnote here that the judge found conflicted with the conclusion that you had violated the prescription refill limits?" *Id.* at 126. After the Government again objected that Respondent's counsel was trying to re-litigate the findings of the earlier proceeding, and before the ALJ ruled on the objection, Respondent's counsel rephrased his question "as simply asking is that the reason for your disagreement with [the Government counsel's] question earlier?" *Id.* Respondent answered:

> The word 'refill' is perhaps ambiguous. When I write a prescription for a patient with an ongoing problem, * * * I would write in the number of refills, if any, and that's a refill. On the other hand, if the patient calls me back a month later and says I need this medicine again, and I'm confident the patient still has that symptom, that problem, I call the pharmacy and say give Ms. Doe another 30 tablets or whatever. Legally, I think it's a new prescription. Some people would call it a refill, but I don't think that the refill thing was intended to necessarily refer to situations in which a doctor phones in what the pharmacy considers a new prescription at that point[.] * * * [W]hether I use the word refill or say give the patient another 30 tablets, basically, it means I've considered what to do, have hopefully a reason to do it, and go on from there. And it's technically, I believe a new prescription. * * * Basically, * * * I did not believe I was violating any refill laws on this.

Id. at 127.

Next, Respondent's counsel asked him if he "remember[ed] what the * * * main issue [was that] the Government * * * had with Patient Number 3?" *Id.* at 127–28. Respondent answered: "[t]he problem with Patient Number 3 was that there was a great deal of confusion from a lot of parties. It was * * * not until much later that I realized the problem." *Id.* at 128. Following the Government's objection (again, on the ground that Respondent was trying to re-litigate the findings of the first proceeding), which was overruled by the ALJ, Respondent testified that:

> There was a question about a pharmacy that called me and said, 'We've got a prescription here, we think something is wrong with it.' And I of course, they knew my signature and my handwriting, and I said, 'Well, you know, I did give the patient a prescription for this, I guess you might as well fill it.' What actually happened and what * * * no one notices was that the patient had taken my prescriptions, run it through a copying machine, then used scissors and cut it to size, * * * took it to pharmacies, and each of them had what looked like a genuine prescription. And eventually, I got copies of both and sure

enough, it was a photocopy so that I think I was acting in innocence, and the pharmacist was right when he thought something was wrong with it, but it was not a prescription that the patient forged. He simply illegally copied a prescription.

Id. at 128–29.

Respondent was then asked whether at some point, he had ceased his relationship with Patient Number 3. *Id.* at 129–30. Respondent answered:

Yes. There were too many suspicious things. I can't remember the details, but not uncommonly a patient will say something like 'my dog ate my pills' or whatever, rather phony-sounding reason for wanting an [sic] new prescription. And believe me, if somebody drops a bottle in the bathroom, the pills always fall in the toilet. I mean it's just, as a doctor, I've heard all these reasons, and I am extremely suspicious, especially now. I often, in fact, have the patient come into the office so I can eyeball the squirming when I start asking the embarrassing questions, so that when these things started happening with Mr. [F.], I finally said enough is enough, no more, no more medical care.

Id. at 130.

Respondent's counsel then asked him "[h]ow much time passed between * * * this issue with regard to the forgery and your ceasing the relationship?" *Id.* Respondent answered that he could not "remember the exact dates" and that he had "no memory of * * * what that time was." *Id.* at 130–31.

Respondent was then asked if "in any way, shape, or form do you take responsibility for * * * Patient Number 3 regarding the forged prescriptions?" *Id.* at 131. Respondent answered:

I wrote a prescription, patient apparently went to two pharmacies, and one of them * * * they was [sic] alert enough to notice that a ballpoint pen hadn't indented it or anything and simply called and said, "I think I have a forged prescription." And I simply said * * * yes * * * "That's what I wrote, the quantity." "You know my signature." "You might as well fill it, cause I did write that prescription for the patient." I didn't realize the patient had photocopied it and * * * had taken it, presumably, [to] two different places.

Id. at 132. Respondent then maintained that if he had known the prescription had been forged, he "would not have done that," but did not specify what "that" was. *Id.*

Respondent further conceded that he did not have the required bi-annual inventory on hand because when he first started practicing in 1959, he had to take an inventory every year and mail it in, but that after "the doctors of the country were notified that they no longer needed to mail the DEA an inventory every two years, * * * we mistakenly believed that we didn't need to do the inventory either, because no one would ever see it except ourselves or an investigator. So I stopped making an inventory. It was, I think, good faith." *Id.* at 134–35. Respondent, however, acknowledged that he had to keep an inventory, receipts for any controlled substances he obtained from drug company representatives, and dispensing records. *Id.* at 135–37.

The Government also asked Respondent a series of questions regarding the MBC's Order. First, it asked Respondent whether he agreed with the Board's finding that he was "guilty of unprofessional conduct in [his] care and treatment of [Patient #1] both in terms of [his] prescribing practice and in terms of [his] recordkeeping?" Tr. 21. Respondent answered that he "agree[d] with the part on recordkeeping," but that "[o]n the other things, I do not agree." *Id.* Respondent then explained that "[t]his patient received textbook treatment in accordance with standards of the American Medical Association, and shortly after, the FDA adopted policies which indicated that [it] agreed with the AMA." *Id.* at 21–22.

The Government then asked Respondent whether he agreed with the Board's finding that Patient #1 "was making the only therapeutic decision and that the patient was determining his need for drugs?" *Id.* at 22. Respondent answered: "No." *Id.* Next, the Government asked Respondent whether he agreed with the Board's finding that "serious monitoring [of Patient #1] was non-existent?" *Id.* at 22–23. Respondent answered: "I was obviously in a position to observe him, that he was showing no evidence of drug overdose or problems. He was monitored but my recordkeeping was inadequate, to say the least." *Id.* at 23.

Next, the Government asked Respondent whether he agreed with the Board's finding that his prescribing practices with respect Patient #1 "could be characterized as irrational polypharmacy?" *Id.* at 23. Respondent answered: "No, I do not, and the reason is that polypharmacy is, by definition, irrational." *Id.* Continuing, Respondent explained "[t]o give more than one drug to a patient when there is a reasonably good reason for doing that is not considered polypharmacy in the medical profession, but it must be rational and there must be a good reason for using more than one drug in a class." *Id.* at 24.

The Government then asked Respondent whether he agreed with the Board's finding that his "prescribing practices to [Patient #1] * * * made little sense?" *Id.* Respondent answered: "Again, this patient needed more than one specific drug in his treatment depending on whether the problem was being awake and alert and reasonably pain free during the daytime and also something additional at night so that he could sleep as well. I do not consider that irrational or unreasonable." *Id.* at 24–25.

Next, the Government asked whether Respondent agreed with the Board's finding that "even though the drugs were given for conditions that [Patient #1] had, their manner of dispensing was totally irrational?" *Id.* at 25. Respondent answered: "No, I do not." *Id.*

The Government then asked whether he agreed with the Board's finding that he "committed acts of clearly excessive prescribing or administering of drugs to" Patient #1? *Id.* at 26–27. Respondent answered: "No." *Id.* at 27; *see also id.* at 50.

The Government also asked Respondent whether he agreed with the Board's finding that he "had violated federal statutes and regulations regulating dangerous drugs or controlled substances?" *Id.* Respondent answered: "In terms of recordkeeping, there's some truth in it. In terms of following accepted guidelines, including those of the American Medical Association, and they're still the guidelines of the Food and Drug Administration, although they were adopted after that, indicate that the treatment I gave was within national standards." *Id.*

Respondent further challenged the State Expert's finding that the doses of Demerol he prescribed to Patient #1 were potentially toxic, contending that there was uncertainty in medical texts as to whether metabolites of the drug accumulate and whether "they cause any significant harm." *Id.* at 36. He testified that even today, there is still controversy over the appropriate dosing of Demerol, although not "as much * * * as there used to be" because most doctors are using oxycodone or morphine to treat patients with severe pain. *Id.* at 38.

Respondent also maintained that Patient #1 had been "treated with all sorts of things other than controlled substances early in his course," and that "the more potent medications and narcotics were used only when the other modalities failed." *Id.* at 32. Respondent asserted that he had tried anti-inflammatories such as Aleve and Naproxen with Patient #1 to no avail, and that he had referred him to "a so-called pain clinic * * * at which they tried everything," including "extensive physical therapy" but this "did not give him any relief." *Id.* at 52. While Respondent admitted that he did not

obtain any of the charts that the pain clinic maintained on Patient #1, he maintained that he was aware of what modalities the clinic had tried because "they're pretty much standard." *Id.* at 53.

Respondent further testified that he "frequently" would not document the use of non-prescription medicines "because it's over-the-counter," and thus a physician reviewing his charts "could not have seen necessarily everything else that was tried." *Id.* at 32. While Respondent agreed that he needed to closely monitor a patient, he admitted that he did not write down every time he saw Patient #1. *Id.* at 40. Respondent testified that Patient #1 had lived with him for a two-year period and that he had observed him on a daily basis. *Id.* at 42.

Respondent's counsel also asked him whether "a reasonable doctor looking at [Patient #1's] history wouldn't have enough information to * * * form a strong opinion except to the extent that the lack of information indicates that perhaps he wasn't treated correct[ly], right?" *Id.* at 40. Respondent answered that he did not "agree quite with that because a person reviewing it with inadequate records would not know * * * [and] probably would not even [be able] to formulate a guess unless there was other evidence pointing in one particular direction." *Id.* Respondent then testified that the Board's decision used "strong language," and that in his "opinion, there were not multiple violations or even violations of [the] standard of care, although there were in recordkeeping." *Id.* at 40–41.

Next, Respondent asserted that it was not true—as found by the State ALJ—that he had ceased treating Patient #1 "in a fully engaged professional manner long ago" and noted that he had refused to provide him with medication that he "did not consider indicated." *Id.* at 43. He then testified that the situation with Patient #1 was not likely to happen again because Patient #1 "was [a] slightly distant cousin," whose family was close to his father's relatives. *Id.*

Respondent testified that while he agreed with the State ALJ statements that he "had a desire to alleviate [Patient #1's] suffering," he did not think that he had "lost sight * * * of [his] duty as a physician." *Id.* at 47. He then testified that he did not think that the prescriptions "were in error," and "other physicians also agreed that [Patient #1] needed relatively heavy medication." *Id.* Respondent then stated that in his "opinion, [Patient #1] was never an addict, and I certainly never gave him medications along those lines." *Id.* at 48.

Respondent then maintained that at some point "in the 1990's, * * * the AMA recommended major changes in dosage as did the FDA * * *. [B]ut the FDA regulations were postponed at the request of the DEA, which felt that they were too high." *Id.* at 51. Continuing, Respondent claimed that "[a]fter a year of discussion, the FDA decided that their proposal was correct, that the[y] * * * did not agree with the DEA, did agree with the American Medical Association and adopted those things, I would guess [in the] early 1990's." *Id.*

Subsequently, Respondent testified that "[s]hortly after [his] Medical Board case," the FDA changed its position and "approved the higher dosage." *Id.* at 55. Clarifying his testimony, Respondent stated that prior to the FDA action, "the highest number of milligrams in a tablet of oxycodone was 5 milligrams," and that "after my Medical Board hearing, the FDA approved a * * * 20 milligram and 40 milligram tablet, [and] about a year and a half later, an 80 milligram tablet." *Id.* at 55–56. In Respondent's view, the FDA was "simply saying many patients need [a] higher dosage than doctors have necessarily been using and that * * * rather than have a patient take 4 or 8 tablets at a time or even eventually 16, a larger size tablet is relevant." *Id.* at 56. Respondent then maintained that these "changes" were "[e]xactly in line with the American Medical Association." *Id.*

Respondent then testified that as early 1958, the AMA had published guidelines which "made it clear that much larger doses of oxycodone were relevant," that the "milligram dosage and timing [of oxycodone] should be identical with [that of] morphine," and that "morphine should be given, based on body weight, on the order of 15 milligrams every 4 to 6 hours, which would be a whole lot of oxycodone tablets in a day." *Id.* at 57. He then maintained that "[t]he FDA and DEA are taking opposite positions on oxycodone dosage * * * and the AMA is on the same side as the FDA." *Id.*

Later, Respondent's counsel asked him if he was "remorseful at all for any of the problems that occurred?" *Id.* at 138. Respondent answered:

> Remorseful, no, because in terms of the treatment I actually gave, I believed it was good treatment. And I can't think of any patient who was damaged by my treatment. At the same time, of course, I certainly am sorry that this relative died while under the care of another physician. Basically, who was giving him narcotics and many other things. So remorse, no, but obviously, I regret many things that happened.

Id. at 139–40. Respondent then explained that what he regretted was that he had "been unable to prescribe medications for people in severe pain." *Id.* at 140.

Respondent was then asked whether he felt that "a distinction [should] be drawn in [his] case" between his contention he had "performed and issued prescriptions that were medically necessary and the Government's contention that [he] didn't * * * properly keep track of [them] and follow the correct procedures in doing it?" *Id.* at 139. Respondent testified:

> I think it's a major distinction. I prescribed in good faith what I thought the patient needed and was appropriate. And partly from my ignorance and partly from maybe being very busy, I did not keep the detailed records I now know I should have taken. The other thing is that there were so many consultations on [Patient #1] especially, nine consultations saying yes * * * your treatment is correct * * * the patient is getting good care. In the practice of medicine, there are enough uncertainties so that if a large group of physicians are almost unanimous in a patient's need for a particular treatment, going back later and saying, well, maybe they were all or nearly all wrong is not very productive. In other words, there are enough uncertainties that going back [in] hindsight is 100 percent, but at the time, things look * * * like the right thing to do.

Id. at 140. Respondent then claimed that "two consultants testified for the Medical Board, but neither one of them, identified any problems in my care or with his medications. And they simply said, oh, if [Respondent] had only told me this or that, I would have decided differently." *Id.*

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that the Attorney General "may deny an application for [a practitioner's] registration if he determines that the issuance of such a registration is inconsistent with the public interest." 21 U.S.C. 823(f). In making the public interest determination, the CSA directs that the following factors be considered:

> (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
>
> (2) The applicant's experience in dispensing * * * controlled substances.
>
> (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
>
> (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
>
> (5) Such other conduct which may threaten the public health and safety.

Id.

"[T]hese factors are * * * considered in the disjunctive." *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and

may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application for a registration. *Id.* Moreover, I am "not required to make findings as to all of the factors." *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (DC Cir. 2005).

Where the Government has met its *prima facie* burden of showing that issuing a new registration to the applicant would be inconsistent with the public interest, the burden then shifts to the applicant to "present sufficient mitigating evidence" to show why he can be entrusted with a new registration. *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))). "Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir.1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct." *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Cuong Tron Tran,* 63 FR 64280, 64283 (1998); *Prince George Daniels,* 60 FR 62884, 62887 (1995); *Hoxie* v. *DEA,* 419 F.3d at 483 ("admitting fault" is "properly consider[ed]" by DEA to be an "important factor[]" in the public interest determination).

Where, as here, DEA has previously issued a Final Order which revoked an applicant's former registration, "the critical issue in th[e] proceeding is whether the circumstances, which existed at the time of the prior proceeding, have changed sufficiently to support [the] conclusion that" granting the application would be consistent with the public interest. *Ellis Turk, M.D.,* 62 FR 19603, 19604 (1997); *Stanley Alan Azen, M.D.,* 61 FR 57893, 57893–94 (1996). Contrary to the ALJ's apparent understanding, this is not an invitation to relitigate the findings of the prior proceeding. Rather, where, as here, an applicant has previously been the subject of an Agency Final Order, the doctrine of *res judicata* bars the relitigation of the factual findings and conclusions of law of the prior proceeding absent the applicant's establishing that he falls within one of the doctrine's recognized exceptions. *See City Drug Co.,* 69 FR 1304, 1306 (2004); *Turk,* 62 FR at 19604; *Azen,* 61 FR at 57894; *see also* Restatement (Second) of Judgments § 28 (2010). So too, the doctrine of *res judicata* bars the relitigation of the findings of the MBC's final order. *See Christopher Henry Lister, P.A.,* 75 FR 28068, 28069 (2010) (citing *University of Tenn.* v. *Elliot,* 478 U.S. 788, 798–99 (1986)); *Marie Y.* v. *General Star Indem. Co.,* 2 Cal. Rptr.3d 135, 155 (Cal. Ct. App. 2003) ("When an administrative agency acts in a judicial capacity to resolve disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, its decision will collaterally estop a party to the proceeding from relitigating those issues."); *see also Misischia* v. *Pirie,* 60 F.3d 626, 629–30 (9th Cir. 1995); Restatement (Second) of Judgments, § 29.

Accordingly, upon the Government's establishing that the Agency has previously issued a Final Order revoking an applicant's registration and absent the applicant's establishing that he falls within a recognized exception to the application of *res judicata,*[7] the Government has satisfied its *prima facie* burden of showing that granting the application would be inconsistent with the public interest. Moreover, the scope of the issues to be litigated is limited. As in any other proceeding, "an applicant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct." *Medicine Shoppe,* 73 FR at 387 (int. quotations and citations omitted).

For example, in *Robert A. Leslie, M.D.,* DEA denied the application of a practitioner whose registration had been previously revoked following his state court convictions for unlawfully prescribing or furnishing controlled substances. 60 FR 14004, 14005 (1995). While the practitioner attempted to relitigate his convictions, the then-Deputy Administrator, agreeing with the ALJ, held that "the conviction is *res judicata,* and that [r]espondent should not be allowed to relitigate the matter." *Id.* Continuing, the Deputy Administrator noted that "although [r]espondent was free to offer new evidence that he would never again engage in the type of conduct that resulted in his conviction, he failed to do so. * * * [W]hile [r]espondent offered evidence and expended time arguing the invalidity of his criminal convictions, he offered no evidence of remorse for his prior conduct, that he has taken rehabilitative steps, or that he recognizes the severity of his actions." *Id.* The Deputy Administrator thus denied the practitioner's application.

Likewise, when, several years later, Dr. Leslie re-applied for a registration, the Deputy Administrator held that the 1995 Agency Order was *res judicata;* the Order specifically noted that the "[r]espondent continued to blame others for his criminal convictions," contending that his name had been forged on various prescriptions; that his criminal convictions had been affirmed because his counsel was ineffective; and that a Government witness in the earlier DEA proceeding had committed perjury. *Robert A. Leslie, M.D.,* 64 FR 25908, 25908–09 (1999). After again observing that both Dr. Leslie's criminal convictions and the 1995 Agency Order were *res judicata,* the Deputy Administrator denied his application, stating that "[r]espondent continues to fail to acknowledge wrongdoing or accept responsibility for his actions. Therefore, the Deputy Administrator is not convinced that [r]espondent has been rehabilitated and would properly handle controlled substances in the future, even on a restricted basis." *Id.* at 25910; *see also Robert A. Leslie, M.D.,* 68 FR 15227, 15231 (2003) (revoking registration obtained through administrative error, noting that "[i]n the face of DEA's repeated concerns regarding his lack of contrition, the [r]espondent remains steadfast in his insistence upon denying any previous wrongdoing. Despite previous findings that his criminal convictions were *res judicata,* the [r]espondent in his support of his most recent application * * * attempted yet again to re-litigate his criminal convictions").[8]

At the instant hearing, the Government objected to various questions asked of Respondent by his counsel on the ground that Respondent was attempting to relitigate the findings of the 1995 Agency Order. Tr. 121–22. Respondent's counsel admitted that this was "true," *id.,* but justified doing so to show purported discrepancies between the record (and the ALJ's decision) in the prior proceeding and the Agency's Final Order. *Id.* at 122. The ALJ overruled the Government's objection

[7] There is no dispute that neither the 1995 DEA Order, nor the 1997 MBC Order, was vacated by a court.

[8] *See also City Drug,* 69 FR at 1307 (denying application; noting that applicant had not "present[ed] any persuasive evidence of meaningful procedural changes * * * that would ensure that it will not again fail to account for controlled substances or dispense [them] without authorization," as well as its "lack of acknowledgement or explanation for previous shortages of large quantities of controlled substances"); *Turk,* 62 FR at 19606 (denying application, noting that "while [r]espondent has stated that he has changed his inventory practices, there is more than sufficient evidence in the record to indicate that [r]espondent has not accepted responsibility for his prior actions as a DEA registrant, [and] has not significantly changed his inventory practices").

and allowed Respondent to pursue this line of inquiry, *id.* at 123, 128; she also allowed Respondent to testify extensively as to why he disagreed with the MBC's findings. Moreover, in her decision, the ALJ ignored many of the findings of the 1995 Agency Order regarding Respondent's prescribing practices, and generally found proved only the various recordkeeping violations to which Respondent admitted. *See generally* ALJ. The ALJ also entirely ignored the MBC's findings that Respondent violated California law by "prescrib[ing] medication without a good faith examination and medical indication," that "he excessively prescribed controlled substances," and that he violated Federal law because he issued prescriptions which lacked "a legitimate medical purpose" and which were issued outside of the usual course of professional practice. *Compare* ALJ at 7–12, 19–27, *with* GX 8, at 27–28. Indeed, in her decision, the ALJ did not even acknowledge that DEA has long applied the doctrine of *res judicata,* let alone explain why the doctrine should not apply here.

Factors Two and Four—The Applicant's Experience in Dispensing Controlled Substances and Record of Compliance With Applicable Controlled Substance Laws

In her discussion of these two factors, the ALJ found only that "[t]he Government has proven and the Respondent has admitted to various record-keeping violations." ALJ at 19. Specifically, the ALJ found that Respondent did not keep receipts for the controlled substances he obtained, did not maintain the required biennial inventories, and that his records were not readily retrievable. *Id.* Noting that Respondent had "shown remorse for" these violations, the ALJ concluded "that this factor falls in favor of granting Respondent's application." *Id.*

It doesn't. As noted above, the ALJ ignored many of the most significant findings of both the 1995 Agency Order and the 1997 MBC Decision, which are relevant under these factors. With respect to Patient #1, the ALJ ignored the DA's findings that Respondent dispensed controlled substances to him "on demand [and] virtually upon request," with "virtually no records *or monitoring,*" and that the prescribing occurred "outside the context of the Respondent's usual professional practice." 60 FR at 55049 (emphasis added). These findings are *res judicata* and establish that Respondent violated the CSA in prescribing to Patient #1. *See* 21 CFR 1306.04(a).

Likewise, the MBC's Decision and Order found that Respondent had committed numerous violations of California law. In addition to his failure to keep required records, the MBC found that Respondent had prescribed controlled substances to Patient #1 "without a good faith examination and medical indication," in violation of Cal. Bus. & Prof. Code § 2242, and that "he excessively prescribed controlled substances," in violation of Cal. Health & Safety Code § 11153. The MBC also found that Respondent violated 21 CFR 1306.04 in that he issued prescriptions to Patient #1 outside of the usual course of professional practice and which lacked a legitimate medical purpose.

While the MBC found that Patient #1 "lived in pain," it nonetheless concluded that "the evidence [wa]s overwhelming that [Patient #1] abused prescription medication over an extended period of time, that his abuse was manifest and apparent to those around him and that [R]espondent could not have been ignorant of this." GX 8, at 24. Of further significance, the MBC considered Respondent's dispensing practices in periods beyond those at issue in the first DEA proceeding including his practices during the periods following both the issuance of the Show Cause Order and the ALJ's recommended decision.

With respect to Patient #1, Respondent testified that in his "opinion, there were not multiple violations or even violations of [the] standard of care, although there were in recordkeeping." Tr. 40–41. He further suggested that the MBC's findings were flawed "because a person reviewing [his treatment of Patient #1] with inadequate records would not know" whether he was being treated appropriately, and "probably would not even [be able] to formulate a guess unless there was other evidence pointing in one particular direction." *Id.* at 40. Respondent also disagreed with the MBC's findings that he had ceased treating Patient #1 "in a fully engaged professional manner long ago;" he asserted that Patient #1 "was never an addict," that the prescriptions were not "in error," and that "other physicians also agreed that [Patient #1] needed relatively heavy medication." *Id.* at 43–48. He further claimed that "two consultants testified for the Medical Board, but neither one of them identified any problems in my care or with [Patient #1's] medications," and that these physicians said that if Respondent "had only told me this or that, I would have decided differently." *Id.* at 140.

All of Respondent's testimony could have been, and should have been presented in the MBC proceeding. Here again, it is clear that Respondent is simply trying to relitigate the findings of the MBC proceeding. Having failed to establish that the MBC proceeding did not provide him with a full and fair opportunity to litigate these issues, the doctrine of *res judicata* precludes Respondent from relitigating them in this proceeding. GX 8, at 26.

In her decision, the ALJ opined that "the record * * * contains evidence of changes in acceptable prescribing practices that make for changed circumstances." ALJ at 21. She noted that "at the previous [Agency] hearing, an expert witness testified to the controversy in the medical community at that time over prescribing practices for chronic pain." *Id.* The ALJ then explained that Respondent "credibly testified that the AMA standards he applied in the past have now been adopted by the FDA, though arguably, the DEA disagrees." *Id.* at 22.

Several pages later, the ALJ repeated this observation, noting that Respondent in this proceeding and a government witness in the first proceeding "stated that there was a controversy in the medical community with regards to his prescribing practices, and that his methods have since been adopted by the FDA, though not necessarily the DEA." *Id.* at 24. Observing that "[t]he Government did not rebut this testimony in any way," the ALJ suggested that "his standard of care, though not accepted universally then or even now, has yet become more established," and that his "methods of prescribing * * * may, according to the record, arguably not be objectionable now." *Id.* The ALJ thus opined that "the circumstances surrounding his prescribing practices have changed." *Id.*

Contrary to the ALJ's view, Respondent's evidence is manifestly insufficient to support a finding of changed circumstances regarding the legitimacy of his prescribing practices. Indeed, the ALJ's finding is quite strange given that for much of Respondent's testimony on this issue, he maintained that his prescribing practices with respect to Patient #1 were consistent with then-accepted medical practices.

For example, Respondent claimed that Patient #1 "received textbook treatment in accordance with standards of the AMA." Tr. 21–22. He maintained "that the treatment I gave was within national standards." *Id.* at 27. Respondent further testified that as "early as 1958," the AMA had published guidelines which "made it clear that much larger doses of oxycodone were relevant," that the "milligram dosage [of

oxycodone] should be identical with morphine," and that "morphine should be given * * * on the order of 15 milligrams every 4 to 6 hours, which would be a whole lot of oxycodone tablets in a day." *Id.* at 57.

Notably, Respondent did not enter into evidence the AMA guidelines he referred to. Nor did he introduce the guidelines of any other body of medical professionals with expertise in treating chronic pain, nor excerpts from any recognized medical treatise. Indeed, given that Respondent maintained that as early as 1958—more than thirty years before the events at issue in the first Agency and MBC proceeding—the AMA had issued guidelines on oxycodone dosage which were consistent with his prescribing practices; this evidence also could have been, and should have been, presented in the prior proceedings.[9] Indeed, it seems most unlikely that the MBC would have found that Respondent violated both State and Federal law if, as he contends, his prescribing practices with respect to Patient #1 had been consistent with the thirty-year old guidelines of one of, if not the largest, organization of physicians in the country, or if his dispensing practices constituted "textbook treatment," or treatment "within national standards."

Respondent further asserted that while at the time of the MBC proceedings, five milligram tablets were the strongest oxycodone available, thereafter, the FDA had "adopted" the AMA guidelines because it approved twenty, forty and then eighty milligram strength tablets for marketing. Respondent did not, however, produce any guidelines or regulation which the FDA has purportedly adopted.

Indeed, it appears that Respondent (and given her findings, the ALJ) fundamentally misunderstand the FDA's role. The FDA's approval of larger-strength tablets of oxycodone for marketing under the Food, Drug and Cosmetic Act does not mean that it is medically appropriate to prescribe those drugs to a particular patient. Rather, the daily dose of a controlled substance to be prescribed to any patient is a matter of a physician's clinical judgment based on his use of accepted medical practices (such as performing a good faith medical examination as California law explicitly requires, *see* Cal. Bus. & Prof. Code § 2242) to diagnose his patient and determine that the patient has a medical indication warranting the prescription, followed by proper monitoring and periodic assessment of the patient to determine both whether the treatment is effective (or causing harmful side effects) and to prevent drug abuse and diversion. *See* GX 8, at 8 (noting the MBC's "acknowledg[ment] that predetermined numerical limits on dosages or length of drug therapy cannot alone justify a claim of unprofessional conduct. Rather, the validity of a physician's prescribing is to be judged on the basis of the diagnosis and treatment of the patient and whether the drugs prescribed are appropriate for the condition. There is a requirement that good faith prescribing requires a good faith history, physical examinations and documentation.").

In short, the FDA does not regulate the practice of medicine; rather, it evaluates drugs to determine whether they are safe and effective for the treatment of particular medical conditions and illnesses. *See Bristol-Myers Squib Co.,* v. *Shalala,* 91 F.3d 1493, 1496 (DC Cir. 1996); *Weaver* v. *Reagen,* 886 F.2d 194,198 (8th Cir. 1989); 21 U.S.C. 396. The regulation of the practice of medicine is primarily a function performed by state medical boards such as the MBC.[10]

In sum, the ALJ's reasoning that "his [Respondent's] standard of care [11] may have become more universally accepted, and * * * his methods of prescribing may, according to the record, arguably not be objectionable now," ALJ at 24, has no credible support in the record. Indeed, it is flatly inconsistent with Respondent's testimony that he provided Patient #1 with treatment that was—even at the time—consistent with accepted standards of medical practice. However, the MBC found otherwise, and I conclude that evidence does not support a finding of changed circumstances.

As for Patient #2, the ALJ found it "relevant that the prior ALJ recognized discrepancies in the Government's evidence relating to how many refills were actually authorized (i.e., six or twenty)." ALJ at 25. The ALJ's view reflects a fundamental misunderstanding of the relationship between the ALJ and the Agency. Contrary to her understanding, the prior ALJ's findings are no longer relevant because the Agency—and not the ALJ—is the ultimate factfinder. *Morall* v. *DEA,* 412 F.3d at 177; 5 U.S.C. 557(b). While the prior ALJ's recommended decision was part of the record in that proceeding, and the Agency was required to consider it in making its findings in that proceeding, *Morall,* 412 F.3d at 177, the appropriate forum to challenge whether the Agency's 1995 finding was supported by substantial evidence was by filing a Petition for Review in a United States Court of Appeals within the time allowed for doing so. Because Respondent did not seek judicial review of the Agency's 1995 Order, the findings of fact and conclusions of law made therein are entitled to *res judicata* effect.

As for Patient #3, the ALJ likewise made no findings under factors two and four. Instead, she noted (under factor five) only that Respondent "received information about possibly forged prescriptions, made inquiries, questioned the patient, was deceived, and ultimately stopped prescribing." ALJ at 25–26.

The findings of the 1995 Agency Order regarding Patient #3 were, however, considerably more extensive than, and materially different from,

[9] Indeed, it appears that Respondent presented such evidence in the MBC proceeding as the State ALJ's decision noted that he argued that "unless dosages exceed the range recommended by the American Medical Association, *Drug Evaluations* (6th Edition), no evidence should be admitted about drug dosages." GX 8, at 26. The State ALJ rejected this argument, explaining that:

[t]he text relied on by respondent is one small source of the standard of care for prescribing practices. * * * It provides information. The fact that respondent relied on [the AMA guidelines] to determine safe dosage does not establish compliance with the standard of care. Respondent fails to understand that his patient was not some representative abstraction. His patient was [L.S.] who presented over time with his own unique medical history. How respondent responded to the medical needs of this particular patient is what is relevant.

GX 8, at 26.

[10] I reject the ALJ's finding that "Respondent credibly testified that the AMA standards he applied in the past have now been adopted by the FDA." ALJ at 22. As noted above, Respondent did not submit a copy of the purported guidelines or regulation, and other than his testimony, which appears to equate the FDA's approval for marketing of greater strength tablets with that of a clinical guideline, there is no evidence that any such guidelines or regulation exist. Accordingly, the Government was not obligated to rebut this testimony.

Beyond this, the ALJ should have some understanding of the FDA's functions and should have carefully considered the inherent plausibility (or lack thereof) of an assertion regarding the scope of the FDA's activities. I further note that whether FDA has adopted such guidelines or a regulation is an issue of legislative (and not historic) fact. *See* II Richard J. Pierce, *Administrative Law Treatise* § 10.5, at 732 (4th ed. 2002). As such, I decline to defer to the ALJ's credibility finding. *See id.* (quoting *Concerned Citizens of So. Ohio, Inc.,* v. *Pine Creek Conservancy Dist.,* 429 U.S. 651, 657 (1977) ("As Mr. Justice Holmes recognized, the determination of legislative facts does not necessarily implicate the same considerations as does the determination of adjudicative facts.")).

[11] The ALJ's use of the phrase "his standard of care" suggests a degree of confusion on her part as to what a standard of care is. The concept of the standard of care refers to a standard of medical practice which is generally recognized and accepted by the medical community. *See Brown* v. *Colm,* 11 Cal.3d 639, 642–43 (1974) ("It is settled that a doctor is required to apply that degree of skill, knowledge and care ordinarily exercised by other members of his profession under similar circumstances."). It is not personal to a physician.

what the ALJ related. More specifically, the Order found that Respondent was notified that Patient #3 was forging prescriptions on three separate occasions, including one that occurred more than two years before the Patient forged seven additional prescriptions. The 1995 Order also found that Patient #3 had told Respondent of his past addiction problems, that Respondent had talked to Patient #3 about the latter's forging of prescriptions, that Patient #3 had denied doing so *but that Respondent did not believe his denial,* and that Respondent nonetheless continued to prescribe narcotics to him. *See* 60 FR at 55049. Moreover, the DA found it concerning that Respondent continued to prescribe controlled substances to a known drug abuser and that he did so even though he knew of Patient #3's criminal behavior.

Once again, Respondent attempted to relitigate the findings of the 1995 proceeding, Tr. 128–32, essentially contending that there was confusion, that the prescription was not forged but rather had actually been photocopied, and that he told the pharmacy to fill it because he had in fact issued Patient #3 such a prescription.[12] Here again, Respondent could have, and should have, presented this evidence in the first proceeding. I therefore conclude that the 1995 Order's findings and conclusions of law with respect to Patient #3 are *res judicata.*

I further reject the ALJ's characterization of Patient #3's prescriptions as "possibly forged" and her assertion that Respondent "questioned the Patient [and] was deceived." ALJ at 25–26. The findings of the 1995 Agency Order make clear that Respondent knew that Patient #3 had forged prescriptions and was abusing drugs, and yet Respondent continued to prescribe controlled substances to him. Here again, the ALJ erred in failing to give *res judicata* effect to the findings of the 1995 Order.

I therefore hold that the findings of the 1995 Agency Order, as well as the findings of the 1997 MBC Order, establish not only that Respondent committed numerous recordkeeping violations, but also that he violated both California law and the CSA by prescribing controlled substances without performing a good faith medical examination and without medical indication. *See* Cal.Bus.& Prof.Code § 2242; *see also* 21 CFR 1306.04(a) ("A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice."). I also find that Respondent violated California law by prescribing excessive quantities of controlled substances, Cal. Health & Safety Code § 11153; that he violated 21 CFR 1306.22(a) by prescribing excessive refills of both Vicodin and Darvocet-N; and that he prescribed Lortab to a known drug abuser and prescription forgerer. I thus conclude that Respondent's experience in dispensing controlled substances and record of compliance with Federal and State laws related to the dispensing of controlled substances establishes a *prima facie* showing that Respondent's registration would be "inconsistent with the public interest."[13] 21 U.S.C. 823(f).

Sanction

As explained above, Agency precedent establishes that "the critical issue in this proceeding is whether the circumstances, which existed at the time of the prior proceeding, have changed sufficiently to support [the] conclusion that" granting the application would be consistent with the public interest. *See Azen,* 61 FR at 57893–94. While the ALJ initially acknowledged this precedent, *see* ALJ at 17, 19–20, she then cited to a different line of cases, explaining that "[w]hen assessing the appropriate remedy in a particular case, the DA should consider all facts and circumstances at hand." *Id.* at 20 (citing *Martha Hernandez, M.D.,* 62 FR 61145, 61147 (1997)). The ALJ did not recognize the tension between these two precedents and proceeded to evaluate "the totality of the circumstances" rather than apply the *Azen* rule. She thus considered various circumstances which are no different today than they were at the time of the original proceeding such as his "overall track record" and the degree of Respondent's culpability.[14] *Id.* at 22–24.

Hernandez did not, however, involve a matter in which the Agency had previously issued a final order of revocation to an applicant; indeed, the decision did not even acknowledge the then-recent decisions in *Azen* and *Turk.* Moreover, subsequent to the issuance of the decision in *Hernandez,* this Agency continued to apply the *Azen* rule. *See Robert Golden,* 65 FR at 5663, 5664 (2000); *Leslie,* 64 FR at 25908. Thus, it is clear that the *Hernandez* decision did not overrule *Azen.* Moreover, Respondent had a meaningful opportunity to litigate such issues as the degree of his culpability and his "overall track record" in prescribing controlled substances in the first proceeding. Due Process does not require that he be given a second bite of the apple as to these issues. Rather, as explained above, to rebut the Government's *prima facie* case and demonstrate that his registration would be consistent with the public interest, Respondent must establish that he accepts responsibility for the full range of his misconduct and demonstrate that he will not engage in similar misconduct in the future. *Medicine Shoppe,* 73 FR at 387; *Leslie,* 60 FR at 14005.

The ALJ acknowledged that "Respondent failed to express remorse for the entirety of his prescribing practices." ALJ at 28. Indeed, what is clear is that Respondent does not acknowledge wrongdoing for anything other than his inadequate recordkeeping as he continues to dispute both the findings of this Agency and the MBC with respect to Patient #1, maintaining that this patient was not an addict (notwithstanding the MBC's finding that he was), that he provided this patient with "textbook treatment" and treatment in accordance with nationally accepted standards (again, notwithstanding the MBC's findings that Respondent's dispensings to him violated numerous provisions of State and Federal law), and that he properly monitored this patient (notwithstanding the MBC's finding that there was "overwhelming" evidence that the patient was abusing prescription medication, that "his abuse was manifest," and that "Respondent could not have been ignorant of this.").

[12] In fact, the 1995 Order makes clear that Patient #3 forged multiple prescriptions.

[13] I have also considered the other factors. With respect to factor one—the recommendation of the state medical board—while the MBC suspended his license for only six months and Respondent now holds a California medical license, the MBC has made no recommendation in this matter. Thus, while Respondent now meets a threshold requirement for obtaining a DEA registration, *see* 21 U.S.C. 823(f), DEA has long held that a practitioner's possession of state authority to handle controlled substances is not dispositive of the public interest inquiry. *See Patrick Stodola,* 74 FR 20727, 20730 (2009); *Leslie,* 68 FR at 15230.

As for factor three, "while a history of criminal convictions for offenses involving the distribution or dispensing of controlled substances is a highly relevant consideration, there are any number of reasons why a registrant may not have been convicted of such an offense, and thus, the absence of such a conviction is of considerably less consequence in the public interest inquiry." *Dewey C. Mackay, M.D.,* 75 FR 49956, 49973 (2010) (citing *Jayam Krishna-Iyer,* 74 FR 459, 461 (2009), and *Edmund Chein,* 72 FR 6580, 6593 n.22 (2007)). Accordingly, that Respondent has not been convicted of an offense within the purview of factor three "is not dispositive of whether * * * his registration [would be] consistent with the public interest." *Id.*

[14] Having explained above that the evidence does not support a finding of changed circumstances with respect to Respondent's prescribing practices so as to deny the application of *res judicata* to the findings of the earlier proceedings, I conclude that it is unnecessary to repeat that discussion here.

Nor, given the latter finding, am I persuaded that Respondent's violations with respect to Patient #1 are solely attributable to his inadequate recordkeeping.

Moreover, as the MBC found, Respondent "fails to acknowledge any responsibility for any of his actions. He blames others or completely excuses his actions." While Respondent now acknowledges that he failed to maintain proper records, it is disturbing that he continues to deny any wrongdoing with respect to his dispensing of controlled substances not only to Patient #1, but also to Patients #2 and 3.

While the ALJ acknowledged that "Respondent must demonstrate remorse to the full extent of his documented misconduct," ALJ at 24 (citing *Prince George Daniels,* 60 FR 62884, 62887 (1995)), and that Respondent had "failed to express remorse for the entirety of his prescribing practices," *id.* at 28, she nonetheless recommended that Respondent be granted a restricted registration to "afford[him] an opportunity to demonstrate that he can responsibly handle controlled substances." *Id.* Noting that fifteen years had passed since the first Agency decision, the ALJ rejected the Government's contention that "the passage of time is not dispositive, especially when coupled with a respondent's refusal to accept responsibility for [his] misconduct." ALJ at 20 (citing Gov. Br. 6). She further maintained that one of the cases cited in the Government's Brief, *John Porter Richards, D.O.,* 61 FR 13878 (1996), actually supported granting Respondent's application, stating that in that case, the "applicant 'continued to maintain that he had not committed the crimes for which he had been convicted.'" ALJ at 21 (quoting 61 FR at 13879); *see also* ALJ at 27. The ALJ then asserted that in *Richards,* "the DA *approved* the applicant's application *without restrictions* despite the fact that, at the hearing, the applicant accepted his conviction but did not completely admit to the crimes for which he was convicted." *Id.* at 21 (quoting 61 FR at 13879–80) (emphasis in ALJ's decision).

It is clear, however, that the ALJ took the quoted language out of context, ignoring that the language was merely a paraphrase of a question asked of the applicant by the Government's counsel. *See* 61 FR at 13879 ("When asked on cross-examination whether, consistent with his not guilty plea, he continued to maintain that he had not committed the crimes for which he had been convicted, the Respondent testified, 'I accept my conviction,' and when asked to what extent he did so, he replied, 'In its completeness.' "). Notably, the Agency did not find in *Richards* that the respondent "continued to maintain that he had not committed the crimes" of which he had been convicted. While in *Richards,* the applicant's answer to the Government's question may not have been entirely responsive, there is no indication in the decision that the Government followed up by asking him whether he denied having committed the crimes and the findings of the decision do not establish what testimony the applicant offered on his direct examination. Beyond this, most reasonable fact finders would, in the absence of testimony denying that one had committed the crime (thus demonstrating that one was talking out of both sides of his mouth), find that the statements referred to above established acceptance of responsibility.

By contrast, Respondent has continued to deny wrongdoing with respect to his dispensing practices. While it has been fifteen years since the first Agency order (which also found that he lacked remorse for both his unlawful recordkeeping and refill practices), and thirteen years since the MBC Order (which also found that he did not accept responsibility), Respondent continues to deny wrongdoing with respect to a significant portion of the misconduct which was found proved in the respective proceedings.[15]

The ALJ also cited *Paul J. Caragine, M.D.,* 63 FR 51592, 51601 (1998), noting that the Agency had granted the respondent in that case a restricted registration, notwithstanding that he "had not adequately demonstrated remorse for his mis-prescribing * * * to allow [him] to demonstrate that he can responsibly handle controlled substances in his medical practice." ALJ at 27. However, more than a year before the hearing in this case, I made clear that:

> [w]hile some isolated decisions of this Agency may suggest that a practitioner who [has] committed only a few acts of diversion was entitled to regain his registration even without having to accept responsibility for his misconduct, * * * the great weight of the Agency's decisions are to the contrary. In any event, the increase in the abuse of prescription controlled substances calls for a clarification of this Agency's policy. Because of the grave and increasing harm to public health and safety caused by the diversion of prescription controlled substances, even where the Agency's proof establishes that a practitioner has committed only a few acts of diversion, this Agency will not grant or continue the practitioner's registration unless he accepts responsibility for his misconduct.

Jayam Krishna-Iyer, M.D., 74 FR 459, 464 (2009) (citation omitted). I further explained that to the extent any "decision of this Agency suggests otherwise, it is overruled."[16] *Id.* at n.9.

It is perplexing that the ALJ did not even acknowledge the holding of *Krishna-Iyer.* However, it is the law of this Agency. Moreover, the requirement that a practitioner accept responsibility for his misconduct applies regardless of whether the acts of diversion were done intentionally, recklessly or negligently. *See Dewey C. Mackay,* 75 FR at 49978 n.39 (noting disagreement with *Caragine*). This is so because the harm to the public is not dependent on the practitioner's mental state in committing the act of diversion, and recognizing one's misconduct is the first and an essential step in demonstrating that it will not happen again.[17] To make

[15] Speculating as to "why it is hard for the Respondent to 'admit errors in judgment,' " the ALJ observed that the MBC had "noted that the Respondent was vilified in the media by Agent Babcock of the California Bureau of Narcotic Enforcement, [and] that her statements hurt her credibility." ALJ at 27. The ALJ then noted that "[d]espite this poor treatment on the part of Agent Babcock, the Respondent has taken full responsibility for his record-keeping violations." *Id.*

The ALJ did not explain why Respondent's having been vilified by Agent Babcock would prevent him from taking responsibility for his prescribing violations but not his recordkeeping ones. In any event, it strains credulity to suggest that fifteen years later, Respondent's inability to accept responsibility for the full scope of his misconduct is because he was vilified in the media.

[16] In *Krishna-Iyer,* I noted that a study of the National Center on Addiction and Substances Abuse (CASA) had found that "[t]he number of people who admit abusing controlled prescription drugs increased from 7.8 million in 1992 to 15.1 million in 2003." National Center on Addiction and Substance Abuse, *Under the Counter: The Diversion and Abuse of Controlled Prescription Drugs in the U.S.* 3 (2005) (quoted at 74 FR at 463). Moreover, "[a]pproximately six percent of the U.S. population (15.1 million people) admitted abusing controlled prescription drugs in 2003, 23 percent more than the combined number abusing cocaine (5.9 million), hallucinogens (4.0 million), inhalants (2.1 million) and heroin (328,000)." *Id.* The study further found that "[b]etween 1992 and 2003, there has been a * * * 140.5 percent increase in the self-reported abuse of prescription opioids," and in the same period, the "abuse of controlled prescription drugs has been growing at a rate twice that of marijuana abuse, five times greater than cocaine abuse and 60 times greater than heroin abuse." *Id.* at 4.

[17] The ALJ further reasoned that "the majority of [Respondent's] issues emanated from his treatment of Patient #1 and only when Patient #1 was living in Respondent's home." ALJ at 23. She then asserted that "this Agency has considered the effect a relative's medical issues can have on a practitioner and recognized that when those stresses are taken out of the picture, it is less likely that the circumstances would ever be repeated." *Id.* (citing *Cecil M. Oakes, M.D.,* 63 FR 11907 (1998)).

While it is true that the Agency's factual findings in *Oakes* noted that the respondent had testified that at the time he altered his DEA registration, he was dealing "with the financial and emotional burdens that accompanied his son's having been diagnosed as having Attention Deficit Disorder," 63 FR at 11908, he further testified that he was "in no

clear, Respondent is not entitled to "an opportunity to demonstrate that he can responsibly handle controlled substances" through the issuance of even a restricted registration unless and until he accepts responsibility for his misconduct.[18]

It is acknowledged that fifteen years have passed since the first Agency Order. *See* ALJ at 20–21, 28. However, DEA has long held that "[t]he paramount issue is not how much time has elapsed since [his] unlawful conduct, but rather, whether during that time. * * * Respondent has learned from past mistakes and has demonstrated that he would handle controlled substances properly if entrusted with a new registration. *Leonardo* v. *Lopez,* 54 FR 36915 (1989); *see also Leslie,* 68 FR at 15227 (revoking registration issued through administrative error on ground that practitioner still refused to acknowledge misconduct which he committed seventeen years earlier notwithstanding that there was no evidence that he had mishandled controlled substances under the erroneously issued registration).

Moreover, it should be noted that neither the 1995 Order, nor any Agency rule, barred Respondent from re-applying at an earlier date. What does bar his obtaining of a new registration is his failure to fully acknowledge his misconduct. Absent Respondent's acknowledgment of the full scope of his misconduct, I am compelled to conclude that issuing him a new registration would be "inconsistent with the public interest." 21 U.S.C. 823(f). Accordingly, I reject the ALJ's recommended ruling and will deny Respondent's application.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) and 0.104, I order that the pending application of Robert L. Dougherty, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective immediately.

Dated: March 11, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–7014 Filed 3–24–11; 8:45 am]

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way * * * using (his son's problems) as an excuse for bad behavior or to try to rationalize it away * * * as being justified." *Id.* Moreover, in discussing the public interest factors and whether the respondent had rebutted the Government's *prima facie* case, the decision made no reference to the medical issues of his son. *See* 63 FR at 11909–10. It is thus inaccurate to say that the Agency "considered the effect a relative's medical issues can have on a practitioner and recognized that when those stresses are taken out of the picture, it is less likely that the circumstances will ever be repeated." ALJ at 23.

Most significantly, the Agency's decision in *Oakes* noted in at least three different places that the respondent had expressed remorse and accepted responsibility for his misconduct. *See* 63 FR at 11909 (noting that "the evidence in favor of denial of Respondent's application is overcome by * * * his expressions of remorse and acceptance of responsibility for his actions"); *id.* at 11910 (noting that while the respondent's misrepresentation on a state application "is troublesome, it does not warrant the denial of Respondent's application in light of his expressions of remorse and acceptance of responsibility for his actions").

Thus, contrary to the ALJ's reasoning, *Oakes* provides no comfort to Respondent. Moreover, even giving weight to Respondent's testimony that he is not likely to again invite a patient to live with him, his testimony does not address his misconduct with respect to Patients #2 and 3.

[18] The ALJ also noted that since the revocation of his registration, "Respondent has had no further problems related to his practice of medicine." ALJ at 20. Given that DEA does not regulate the practice of medicine, it is an open question whether such evidence is even relevant in assessing whether an applicant's registration would be consistent with the public interest. *See Edmund Chein,* 72 FR 6580, 6590 (2007) (declining to decide "whether a registrant's unwillingness to comply with State rules that are unrelated to controlled substances can be considered [in a revocation proceeding] when the registrant maintains a valid State license").

What is noteworthy, however, are the State ALJ's extensive findings regarding Respondent's dispensing of controlled substances to Patient #1, not only during the period following the issuance of the first Order to Show Cause on July 29, 1993, but also after the DEA ALJ's issuance of his recommended decision on January 12, 1995. While the DEA ALJ's decision was not a final decision of the Agency, it found that Respondent dispensed controlled substances to Patient #1 "on demand," "virtually upon request," with "virtually no scrutiny," that his "prescribing and dispensing to [Patient #1] was outside of the context of the Respondent's usual professional practice" and thus violated 21 CFR 1306.04(a), and that the Government had "established a *prima facie* case under factor (2)." GX 6, at 20. Yet thereafter, Respondent continued to engage in what the State ALJ "characterized as irrational polypharmacy"; the State ALJ further noted that "[t]otally absent from his care and treatment of [Patient #1] was control, monitoring and periodic assessment" and that "[f]rom 1990 to 1996, almost all of respondent's prescribing to [Patient #1] took place in the absence of a legitimate physical examination." GX 8, at 15–16.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Erwin E. Feldman, D.O.; Revocation of Registration

On May 29, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Erwin E. Feldman, D.O. (Respondent), of Madison Heights, Michigan. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AF9086415, which authorizes him to dispense controlled substances as a practitioner, and the denial of any pending applications to renew his registration, on the ground that his "continued registration is inconsistent with the public interest." Show Cause Order at 1 (citing 21 U.S.C. 823(f) and 824(a)).

More specifically, the Show Cause Order alleged that on January 18, 2005, DEA issued an Order to Show Cause to Respondent, which alleged, *inter alia,* that between December 2001 and July 2004, he had prescribed controlled substances on ten occasions to undercover agents without performing a medical examination, and that he had issued prescriptions for Suboxone "to treat opiate addiction without having obtained" certification from the Michigan Center for Substance Abuse Treatment and a separate DEA registration to prescribe controlled substances for "maintenance and detoxification treatment of opiate addiction as required by 21 U.S.C. 823(g)." *Id.* at 1–2.

Next, the Show Cause Order alleged that on April 4, 2007, Respondent entered into a Memorandum of Agreement (MOA) with the Agency to resolve the allegations of the 2005 Show Cause Order, which was to remain in force through May 2010. *Id.* at 2. The Show Cause Order then alleged that under the MOA, Respondent agreed that he would prescribe controlled substances for only a thirty-day supply with one refill; that he would not prescribe controlled substances to persons who were not residents of the State of Michigan; that he would not prescribe controlled substances to family members; that he would maintain a log of all controlled substance prescriptions he issued; that he would maintain in patient charts, reports from the Michigan Automated Prescriptions System (MAPS) for all patients who received controlled substances from him for "in excess of six months"; and that he would notify DEA "in writing, within twenty days of the initiation of any proceedings which impacted [his] ability to handle controlled substances, including the initiation of any action by a state entity to restrict, deny, rescind, suspend, revoke or otherwise limit [his] authority to handle controlled substances." *Id.*

Finally, the Show Cause Order alleged that Respondent had violated the MOA. *Id.* The Order specifically alleged that "on several occasions," Respondent had issued controlled substance prescriptions "with as many as seven refills"; that he had prescribed controlled substances to residents of Florida and Colorado; that he had prescribed Phenobarbital, a schedule IV

controlled substance, to his wife; that he had failed to maintain an accurate log of his controlled substance prescriptions; that he had failed to maintain MAPS reports for those patients he prescribed controlled substances to for more than six months; and that he had "failed to notify DEA in writing" that on November 3, 2008, the Michigan Board of Osteopathic Medicine and Surgery had filed an administrative complaint against his medical license. *Id.*

Respondent requested a hearing on the allegations, and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJs). Thereafter, the ALJ ordered the parties to file pre-hearing statements. Ex. 6. On July 27, 2009, the Government filed its pre-hearing statement; on August 17, Respondent's counsel filed a notice of appearance and requested a two-week extension to file Respondent's pre-hearing statement. *Id.* The record does not disclose what action the ALJ took in response to Respondent's request for an extension. However, on September 4, the ALJ issued a "Notice to Show Cause Why the Proceeding Should Not Be Terminated" and gave Respondent "until September 18 to respond." *Id.* On September 21, Respondent's counsel faxed a document which bore the caption of Respondent's Pre-Hearing Statement. *Id.* However, when several pages appeared to be missing, the ALJ's office left telephone messages on September 21, 22 and 23 with Respondent's counsel, notifying him that the entire document had not been received. *Id.*

On September 28, the ALJ issued another "Notice to Show Cause Why the Proceeding Should Not Be Terminated" and gave Respondent until October 1 to file a response. *Id.* However, on October 20, 2009, the ALJ ordered that the proceeding be terminated, noting that Respondent had not filed a response to the order. *Id.* The ALJ further "conclude[d] that Respondent has waived his right to a hearing." Order Terminating Proceedings, at 1.

Thereafter, the Investigative Record was forwarded to this Office for final agency action. Having reviewed the entire record in this matter, I adopt the ALJ's finding that Respondent has waived his right to a hearing. *See* 21 CFR 1301.43(d). I make the following findings of fact.

Findings

Respondent is the holder of DEA Certificate of Registration, AF9086415, which authorizes him to dispense controlled substances in schedules II through V as a practitioner. Respondent's registration was due to expire on September 30, 2008; however, on September 22, 2008, Respondent submitted a renewal application. Because Respondent's renewal application was timely submitted, I find that Respondent's registration remains in effect pending the issuance of this Decision and Final Order. *See* 5 U.S.C. 558(c). Moreover, on March 17, 2010, Respondent submitted a further application for registration as a practitioner. *See* GX 2.

On January 18, 2005, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to Respondent, which proposed the revocation of his registration. GX 3. The 2005 Show Cause Order alleged that Respondent had "issued numerous prescriptions for controlled substances to" an addict, and that he had continued to prescribe controlled substances to patient P.H. even after he became aware that P.H. had been admitted to a hospital following an overdose. *Id.* at 2–3. This Show Cause Order further alleged that between December 2001 and July 2004, four DEA Agents made undercover visits to Respondent and that on at least ten occasions, the Agents had obtained prescriptions "without having received any type of medical exam." *Id.* at 3.

The 2005 Show Cause Order also alleged that Respondent was engaged in family practice, that he issued a substantially greater number of controlled-substance prescriptions than four other family practice physicians who practiced at the same medical office building, and that he had issued approximately 59% of the controlled substance prescriptions which were dispensed by the Oakland Medical Pharmacy, which was located in the same building. *Id.* at 1, 4–5. Finally, the Show Cause Order alleged that Respondent had prescribed Suboxone to three patients even though he did not possess a certification issued by the Michigan Center for Substance Abuse Treatment or a DEA registration to prescribe controlled substances for maintenance and detoxification treatment; the Order also alleged that he had prescribed Suboxone to three patients simultaneously with other controlled substances which were contraindicated. *Id.* at 5–6.

Respondent requested a hearing on the allegations of the 2005 Show Cause Order. Thereafter, the parties settled the matter and entered into a Memorandum of Agreement (MOA), under which the Agency agreed to renew Respondent's registration subject to various terms as set forth in the MOA. The MOA, which became effective on May 21, 2007, was to remain in force for a period of three years. GX 5, at 2 & 5.

More specifically, Respondent agreed to limit his controlled substance activities "to prescribing only," that he would prescribe a controlled substance for only a thirty-day supply with one refill, and that he would issue a new controlled-substance prescription only after a patient visited with him. *Id.* at 2. Respondent also agreed that he would not prescribe controlled substances to persons who were not residents of the State of Michigan; that he would not prescribe controlled substances "to members of his immediate family"; that he would maintain a quarterly log of all controlled-substance prescriptions he issued which would be available to DEA personnel on request; and that in his patient charts, he would maintain reports from the Michigan Automated Prescriptions System (MAPS) for all patients who received controlled substances from him for "in excess of six months." *Id.* at 2–3.

Respondent also agreed that he would not "delegate to any pharmacist authorization to dispense" a new controlled-substance prescription "or refill an existing prescription * * * prior to speaking with [him] or his designated representative * * * unless such prescription is pursuant to a lawful prescription order by [him]." *Id.* at 3. Respondent further agreed to notify DEA "in writing, within twenty days of the initiation of any proceedings which impacted [his] ability to handle controlled substances, including the initiation of any action by a state entity to restrict, deny, rescind, suspend, revoke or otherwise limit [his] authority to handle controlled substances." *Id.* at 4. Finally, Respondent agreed that "if he violate[d] any term or condition of [the MOA], such violation could result in [the] initiation of proceedings to revoke his" DEA registration. *Id.* at 4–5.

According to the affidavit of a DEA Diversion Investigator (DI), following Respondent's submission of his renewal application, DIs obtained from both local pharmacies and MAPS, information pertaining to the prescriptions issued by Respondent; the DIs also met with Respondent on February 11, 2009 to review his compliance with the MOA. GX 22, at 4–5.

During the February 11, 2009 meeting, Respondent provided the DIs with his controlled-substance prescription log. *Id.* at 5. The log showed that Respondent had issued prescriptions to several patients with "as many as five refills" for Androgel, a schedule III controlled substance, as well as that he had issued prescriptions with between

three and seven refills, to multiple patients for Testim, another schedule III controlled substance. *Id.; see also* GXs 7, 9–11, 13. The evidence also showed that Respondent had issued a prescription for Ativan (lorazepam), a schedule IV controlled substance, with three refills, to two different patients. *See* GX 7.

Based on their review of MAPS data and medical records, the DIs further determined that on December 21, 2007, Respondent had issued a prescription for hydrocodone/acetaminophen, a schedule III controlled substance to M.L.G., a resident of Florida; that on January 8, 2008, he had issued a prescription for propoxyphene/acetaminophen, a schedule IV controlled substance, to M.S.E., a resident of Colorado; and that on July 25 and August 18, 2008, he had issued prescriptions for 60 and 90 tablets of alprazolam, a schedule IV controlled substance, to B.P., a resident of Port Orange, Florida. GX 22, at 6. The DIs further determined that on September 24, 2007, Respondent prescribed 160 tablets of phenobarbital, a schedule IV controlled substance, to his wife, by calling in a prescription to a local pharmacy. *Id.* at 7; *see also* GX 16. Moreover, during the February 11, 2009 meeting with the DIs, Respondent denied calling in the prescription for his wife and maintained "that he called in a refill of an earlier phenobarbital prescription issued by" another physician (Dr. C.) on September 21, 2007. GX 22, at 7. However, the prescription issued by Dr. C. was for only sixteen tablets with two refills. *Id.*

In addition, the DIs compared the MAPS report showing Respondent's prescribing with the controlled-substance log he was required to maintain. *Id.* at 8. This review showed that Respondent had failed to document fourteen prescriptions in the log. *Id.* Upon reviewing the patient charts, the DIs also found various instances in which Respondent had prescribed controlled substances to a patient for more than six months and had not maintained a MAPS report in the patient's chart. *Id.* at 9.

Finally, on November 3, 2008, the Michigan Board of Ostheopathic Medicine and Surgery issued an administrative complaint to Respondent charging him with eight counts of violating state law, including five counts of "prescribing drugs without a lawful diagnostic or therapeutic purpose." GX 18, at 5–12; 19 (citing Mich. Comp. Laws § 16221(c)(iv)). The Board also charged Respondent with negligence and incompetence based on his prescribing of Suboxone to treat opioid dependence without having "obtain[ed] the necessary certification." *Id.* at 18–19 (citing Mich. Comp. Laws §§ 16221(a) and 16221(b)(i)). While the Board sought to impose sanctions on Respondent's medical license,[1] *see id.* at 1–3, Respondent did not notify DEA of the proceeding.[2] GX 22, at 10.

Discussion

Section 304(a) of the CSA provides that a "registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a)(4). In determining the public interest, Congress directed that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

"[T]hese factors are considered in the disjunctive." *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application for a registration. *Id.* Moreover, I am "not required to make findings as to all of the factors." *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).[3]

In this matter, I conclude that the record establishes that Respondent has violated multiple provisions of the MOA and that these violations are relevant under factors two and five. The record also establishes that Respondent made a false statement to DEA Investigators when he denied having issued a controlled substance prescription to his wife. This conduct is also relevant under factor five. I therefore conclude that Respondent has committed acts which render his registration inconsistent with the public interest and that these acts are sufficiently egregious to warrant the revocation of his registration.[4]

Factors Two and Five—Respondent's Experience in Dispensing Controlled Substances and Such Other Conduct Which May Threaten Public Health and Safety

In May of 2007, DEA exercised forbearance and allowed Respondent to settle a previous Show Cause proceeding by entering into an MOA. However, as found above, Respondent promptly proceeded to violate multiple provisions of the MOA.

First, Respondent violated the MOA's restriction that he could only prescribe a thirty-day supply of a controlled substance with one refill, and that he could issue a new prescription only after the patient visited him. More specifically, the record shows that Respondent issued prescriptions which authorized multiple refills to multiple patients for both schedule III anabolic steroids (Androgel and Testim) and a schedule IV depressant (lorazepam).

Second, Respondent violated the MOA's provision that he could not prescribe a controlled substance to a non-resident of Michigan. More specifically, Respondent prescribed hydrocodone/acetaminophen, a schedule III controlled substance, to

[1] Respondent received the complaint on November 8, 2008. *See* GX 19 (letter from Respondent to Michigan Bureau of Health Professions).

[2] In its Request for Final Agency Action, the Government also contends that Respondent altered the expiration date of his registration when he submitted his credentials to a health insurance company. The Government did not, however, establish that it provided notice to Respondent of its intent to rely on this conduct in this proceeding.

[3] The Government has "the burden of proving that the requirements for * * * revocation or suspension pursuant to section 304(a) * * * are satisfied." 21 CFR 1301.44(e); *see also* 21 CFR 1301.44(d) (Government has "the burden of proving that the requirement for [a] registration pursuant to section 303 * * * are not satisfied"). In a contested hearing, where the Government satisfies its *prima facie* burden, the burden then shifts to the registrant to demonstrate why he can be entrusted with a new registration. *Medicine Shoppe-Jonesborough,* 73 FR 363, 380 (2008).

[4] With respect to factor one, while the Investigative Record contains a copy of the Administrative Complaint filed by the Michigan Board, there is no evidence establishing the outcome of this proceeding. However, even assuming that Respondent retains his state authority, DEA has long held that while the possession of state authority is an essential condition for holding a Practitioner's registration, *see* 21 U.S.C. 823(f), this factor is not dispositive in the public interest inquiry. *Patrick Stodola,* 74 FR 20727, 20730 n.16 (2009).

Likewise, there is no evidence that Respondent has been convicted of a criminal offense under either Federal or State law related to the distribution or dispensing of a controlled substance (factor three). However, because there are multiple reasons why a person may not even be charged, let alone be convicted of such an offense, DEA has long held that this factor is not dispositive. *See Edmund Chein,* 72 FR 6580, 6593 n.22 (2007).

M.L.G., a resident of Florida; he prescribed propoxyphene and acetaminophen, a schedule IV controlled substance, to M.S.E., a resident of Colorado; and on two occasions, he prescribed alprazolam, a schedule IV controlled substance to B.P., a resident of Florida.

Third, Respondent violated the MOA's prohibition against his prescribing to a member of his immediate family. More specifically, on September 24, 2007, Respondent prescribed 160 tablets of phenobarbital, a schedule IV controlled substance, to his wife. Moreover, when questioned by the DIs regarding the prescription, Respondent denied having called in the prescription and asserted that he had only called in a refill of an earlier prescription which had been written by another physician. Respondent's statement was false because the other physician had authorized refills for only sixteen tablets, and it was materially false because the MOA prohibited him from prescribing to a family member and was thus capable of influencing the decision of the Agency as to whether to seek the revocation of his registration. *See David A. Hoxie, M.D.,* 69 FR 51477, 51479 (2004) (considering false statements to investigators under factor five).

Fourth, Respondent violated the MOA's requirement that he maintain a log of all controlled-substance prescriptions he issued. More specifically, Respondent failed to document fourteen controlled-substance prescriptions in the log.

Finally, Respondent violated the MOA's requirement that he notify DEA, in writing, within twenty days, of "the initiation of any action by a state entity to * * * suspend, revoke, or otherwise limit [his] authority to handle controlled substances." Notwithstanding that the State filed an Administrative Complaint against him, which sought to impose sanctions on his medical license and his authority to handle controlled substances, *see* Mich. Comp. Laws § 333.7311(6), Respondent failed to notify DEA that the proceeding had been brought.

DEA has long held that a registrant's failure to comply with the terms of an MOA can constitute acts which render his registration inconsistent with the public interest. *See Fredal Pharmacy,* 55 FR 53592, 53593 (1990) (holding that pharmacy which violated MOA "ha[d] engaged in conduct which threatens the public health and safety"). This is so even if the violation of the MOA does not establish a violation of the CSA or its implementing regulations. Moreover, Respondent's various violations of the MOA, as well as his having made a false statement to the Investigators, show that he cannot be trusted to faithfully comply with the obligations of a registrant. I therefore conclude that Respondent's registration should be revoked and his pending application should be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a)(4), as well as by 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, AF9086415, issued to Erwin E. Feldman, D.O., be, and it hereby is, revoked. I further order that any application of Erwin E. Feldman, D.O., to renew or modify such registration, be, and it hereby is, denied. This Order is effective April 25, 2011.

Dated: March 10, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–7047 Filed 3–24–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Finding of No Significant Impact; Notice of Availability of the Finding of No Significant Impact (FONSI) Concerning a Proposal To Award a Contract for New Low Security Beds to One Private Contractor To House Approximately 1,000 Federal, Low-Security, Adult Male, Non-US Citizen, Criminal Aliens at a Contractor-Owned, Contractor-Operated Correctional Facility

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Finding of No Significant Impact.

SUMMARY: The U.S. Department of Justice, Federal Bureau of Prisons (BOP) announces the availability of the Finding of No Significant Impact (FONSI) concerning the Environmental Assessment (EA) for the proposal to award one or more contracts to house approximately, 1,000 federal, low-security, adult males, criminal aliens within one existing contractor owned, contractor operated facility.

Background Information

Growth of the federal inmate population has been substantial over the last two decades. Currently, the increased federal inmate population exceeds the combined rated capacities of the 116 BOP facilities. It is projected that this growth will continue as a result of actions and programs implemented by the U.S. Department of Justice and the U.S. Department of Homeland Security regarding sentenced and unsentenced criminal aliens.

In response, the BOP is seeking flexibility in managing its current shortage of beds by contracting for those services with non-federal facilities to house federal inmates. This approach provides the BOP with flexibility to meet population capacity needs in a timely fashion, conform to federal law, and maintain fiscal responsibility, while successfully attaining the mission of the BOP.

The BOP proposed action is to award one contract to house approximately 1,000 federal low-security, adult male, non-U.S. citizen, criminal aliens at an existing privately owned and privately operated correctional facility. Under the Proposed Action, the selected contractor would be required to operate the facility in a manner consistent with the mission and requirements of the BOP. All inmate services would be developed in a manner that complies with the BOP's contract requirements, as well as applicable federal, state, and local laws and regulations. The contract also requires that no new construction or expansion of the existing facility occur. In addition, the facility will be within proximity, and have access to, ambulatory, fire and police protection services. The federal inmates assigned to this facility would consist primarily of inmates with sentences of 90 months or less remaining to be served. As described previously these inmates are anticipated to be low-security, adult male, non-U.S. citizen, criminal aliens, however the BOP may designate any inmate within its custody to serve their sentence in this facility. The contract awarded for this action would have one four-year base period and three, two-year option periods, for a maximum term of ten years.

Five existing privately owned and operated correctional facilities in Kentucky, Louisiana, and Texas have been offered in response to the BOP's nationwide solicitation from which the BOP will award one contract to one of the five facilities offered. Each of the following existing facilities has been evaluated in this EA. In addition, the No Action Alternative is evaluated, to determine baseline conditions and comply with the provisions of NEPA.

- Lee Adjustment Center. Located on an approximately 90 acre parcel in Beattyville, Kentucky.
- Limestone County Detention Center. Located on a 293 acre parcel in Groesbeck, Texas.

• Jackson Parish Correctional Center. Located on approximately 20 acres in Jonesboro, Louisiana.

• Pine Prairie Correctional Center. Located on an approximately 15 acre parcel in Pine Prairie, Louisiana.

• Jack Harwell Detention Center. Located on an approximately 20 acre parcel in Waco, Texas.

No other facilities are under consideration by the BOP

Project Information

Pursuant to Section 102, 42 U.S.C. 4332, of the National Environmental Policy Act (NEPA) of 1969, as amended and the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the BOP published an EA concerning a proposal to award one contract to house approximately 1,000 low-security, adult male, criminal aliens within one existing contractor-owned and contractor-operated correctional facility.

Under the current solicitation, the BOP required that, prior to contract award, offerors provide information regarding past environmental activities and the environmental condition of the proposed sites and institutions. The EA, which is incorporated by reference describes the potential environmental impacts associated with the Action Alternatives, as well as the No Action Alternative. The stated purpose and need was the provision of approximately 1,000 beds although the overall system need is far greater. The document describes baseline environmental conditions, including the natural and human environments, addresses potential environmental impacts of the No Action Alternative and Action Alternatives, and includes appropriate mitigation measures.

Further, as required by the solicitation, the BOP has taken several steps regarding offerors environmental documentation. First, the BOP has independently evaluated and verified the accuracy of the offerors environmental documentation. Second, the BOP has given greater consideration to the proposal which represents the preferred alternative. Third, the BOP reserved the right to eliminate proposals based on the adequacy of the documentation provided by the offeror(s) or the potential impact to the quality of the human environment. Last, the BOP reserved the right to disclose or make public any environmental documentation or other environmental information.

An impact analysis of the alternatives was prepared as part of the EA. The analysis evaluated natural, cultural, and socioeconomic impacts of the Proposed Action for each of the Action Alternatives. The analysis included the environmental information provided by the offerors, as well as site visits. The BOP published the EA on January 28, 2011 and published a Notice of Availability (NOA) in the **Federal Register** and in local newspapers associated with each of the five proposed alternative locations. The NOA provided a 30-day public comment period which began on January 28, 2011 and ended on February 28, 2011. The BOP also distributed copies of the EA to federal, state and local officials, resource agencies, and other interested parties. No comments were received regarding the EA during the 30-day comment period. However, the BOP did receive a letter from an individual after the end of the comment period containing several comments related to the Lee Adjustment Center alternative in Beattyville, Kentucky. Although this comment letter was received after the comment period ended, the BOP reviewed and considered comments on the Lee Adjustment Center alternative in the NEPA process.

The Limestone County Detention Center in Groesbeck, Texas is the selected alternative that best meets BOP's needs and has no significant impact on the human, natural or cultural environment. Mitigation for the project is not required due to the lack of impacts to natural, cultural, and socioeconomic resources. Implementation of the proposed action at the Limestone County Detention Center in conjunction with past, present, or reasonably foreseeable future actions, is not anticipated to result in major adverse cumulative impacts to natural, cultural or socioeconomic resources in the area.

Availability of Finding of No Significant Impact

Pursuant to the requirements of the NEPA and subsequent guidelines for preparing environmental documents, including 40 CFR 1506.5(b), the BOP has conducted its own evaluation of the environmental issues and takes responsibility for the scope and content of the EA prepared for New Low Security Beds, January 2011. The BOP has determined that the selected action does not significantly impact the quality of the human environment.

The FONSI and other information regarding the proposed action are available upon request by contacting: Richard A. Cohn, Chief, or Issac J. Gaston, Site Specialist Capacity Planning and Site Selection, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534 *Tel:* 202–514–6470, *Fax:* 202–616–6024/*E-mail: racohn@bop.gov* or*igaston@bop.gov*

FOR FURTHER INFORMATION CONTACT: Richard A. Cohn, or Issac J. Gaston, Federal Bureau of Prisons.

Dated: March 16, 2011.

Richard A. Cohn,

Chief, Capacity Planning and Site Selection Branch.

[FR Doc. 2011–6819 Filed 3–24–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Petition for Classifying Labor Surplus Areas

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Petition for Classifying Labor Surplus Areas," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before April 25, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under Executive Orders 12073 and 10582, the DOL issues an annual list of Labor Surplus Areas (LSAs) used by Federal and State entities in a number of actions such as procurement and property transfer. The annual LSA list is updated during the year, based upon petitions submitted to the DOL by State Workforce Agencies requesting additional areas for LSA certification. This information collection is specified by regulations 20 CFR part 654.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0207. The current OMB approval is scheduled to expire on March 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 10, 2010 (75 FR 77001).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0207. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Petition for Classifying Labor Surplus Areas.

OMB Control Number: 1205–0207.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 1.

Total Estimated Number of Responses: 1.

Total Estimated Annual Burden Hours: 3.

Total Estimated Annual Costs Burden: $0.

Dated: March 21, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–7132 Filed 3–24–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Longshore and Harbor Workers' Compensation Act Pre-Hearing Statement

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, "Longshore and Harbor Workers' Compensation Act Pre-Hearing Statement," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before April 25, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Regulations section 20 CFR 702.317 provides for the referral of claims under the Longshore Act for formal hearings. The Pre-Hearing Statement (Form LS–18) is used to refer cases to the Office of Administrative Law Judges for formal hearing under the Longshore and Harbor Workers' Compensation Act.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0036. The current OMB approval is scheduled to expire on March 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 23, 2010 (75 FR 71456).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1240–0036. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs (OWCP).

Title of Collection: Pre-Hearing Statement.

OMB Control Number: 1240–0036.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 5200.

Total Estimated Number of Responses: 5200.

Total Estimated Annual Burden Hours: 884.

Total Estimated Annual Costs Burden: $13,888.

Dated: March 21, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–7039 Filed 3–24–11; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Rehabilitation Action Report (OWCP–44). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 24, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1447, E-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION

I. *Background:* The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) and the Longshore and Harbor Workers' Compensation Act (LHWCA). These acts provide vocational rehabilitation services to eligible workers with disabilities. Section 8104(a) of the FECA and § 939(c) of the LHWCA provide that eligible injured workers are to be furnished vocational rehabilitation services, and § 8111(b) of the FECA and § 908(g) of the LHWCA provide that persons undergoing such vocational rehabilitation receive maintenance allowances as additional compensation. Form OWCP–44 is used to collect information necessary to decide if maintenance allowances should continue to be paid. Form OWCP–44 is submitted to OWCP by contractors hired to provide vocational rehabilitation services. Form OWCP–44 gives prompt notification of key events that may require OWCP action in the vocational rehabilitation process. This information collection is currently approved for use through July 31, 2011.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the approval for the extension of this currently approved information collection in order to ascertain the status of a rehabilitation case and to expedite adjudicatory claims action based on events arising from a rehabilitation effort.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Rehabilitation Action Report

OMB Number: 1240–0008.

Agency Number: OWCP–44.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Government.

Total Respondents: 6,050.

Total Annual Responses: 6,050.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 1,010.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 21, 2011.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2011–7046 Filed 3–24–11; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (11–025)]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the

Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Monday, April 18, 2011, 8:30 a.m. to 5 p.m., and Tuesday, April 19, 2011, 8:30 a.m. to 4 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Rooms 3H46 and 5H45 consecutively, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 800–779–7680, pass code PSS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com,* meeting number on April 18 is 996 764 473, and password PSS_Apr18; the meeting number on April 19 is 998 076 509, and password PSS_Apr19. The agenda for the meeting includes the following topics:

—Update on the Planetary Science Division Including an Update on the NASA/ESA Bilateral
—Decadal Survey
—Outer Planets Working Group Report
—Mars Working Group Report

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: March 18, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration and Space Administration.

[FR Doc. 2011–7037 Filed 3–24–11; 8:45 am]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending time is approximate):

Arts Education (application review): April 14, 2011, by teleconference. This meeting, from 1 p.m. to 1:45 p.m. DST will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: March 21, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2011–7035 Filed 3–24–11; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export Reactor Components

Pursuant to 10 CFR 110.70 (b) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.rnc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this export license application follows.

NRC Export License Application

DESCRIPTION OF MATERIAL

Name of applicant Date of application Date received Application No. Docket No.	Material type	Total quantity	End use	Recipient country
Curtiss-Wright Electro-Mechanical Corporation. February 10, 2011 February 23, 2011 XR173 11005918	Complete primary coolant pump systems, related equipment, and spare parts.	Enough for six AP–1000 (design) reactors.	Construction, maintenance, and operation of AP–1000 (design) nuclear reactors.	China.

Dated this 18th day of March 2011 in Rockville, Maryland.

For the Nuclear Regulatory Commission.

Nader L. Mamish,

Acting Deputy Director, Office of International Programs.

[FR Doc. 2011–7084 Filed 3–24–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64102]

Order Cancelling Registrations of Certain Transfer Agents

March 21, 2011.

On November 4, 2010, notice was published in the **Federal Register** that the Securities and Exchange Commission ("Commission") intended to issue an order, pursuant to Section 17A(c)(4)(B) of the Securities Act of 1934 ("Act"),[1] cancelling the registrations of certain transfer agents.[2] For the reasons discussed below, the Commission is cancelling the registration of the transfer agents identified in the attached Appendix.

For Further Information Contact: Jerry W. Carpenter, Assistant Director, or David Karasik, Special Counsel, at (202) 551–5710, U.S. Securities and Exchange Commission, Division of Trading and Markets, Room 7321 SP1, 100 F Street, NE., Washington, DC 20549–7010, or by e-mail at *tradingandmarkets@sec.gov* with the phrase "Notice of Intention To Cancel Transfer Agent Registration" in the subject line.

Background:

Section 17A(c)(4)(B) of the Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. On November 4, 2010, the Commission published notice of its intention to cancel the registration of certain transfer agents whom it believed were no longer in existence or had ceased doing business as transfer agents.[3]

In the notice, the Commission identified 45 such transfer agents and stated that at any time after December 15, 2010, which was 41 days after the notice was published in the Federal Register, the Commission intended to issue an order canceling the registrations of any or all of the identified transfer agents. Three transfer agents contacted the Commission to object to the cancellation of their registrations stating that they have not ceased doing business as a transfer agent. The Commission has decided not to cancel the registration of these three transfer agents at this time. Two other transfer agents contacted the Commission regarding the cancellation of their registrations but did not object to such cancellation. None of the remaining 40 identified transfer agents contacted the Commission to object to the cancellation of their registrations.

Accordingly, the Commission is cancelling the registrations of the 42 transfer agents identified in the Appendix attached to this Order.

Order

On the basis of the foregoing, the Commission finds that each of the transfer agents whose name appears in the attached Appendix either is no longer in existence or has ceased doing business as a transfer agent.

It is therefore ordered pursuant to Section 17A(c)(4)(B) of the Act that the registration as a transfer agent of each of the transfer agents whose name appears in the attached Appendix be and hereby is cancelled.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.[4]

Cathy H. Ahn,

Deputy Secretary.

Appendix

Transfer agent name	File No.
ADVEST TRANSFER SERVICES, INC.	8405855
AGN ASSOCIATES & STOCK TRANSFER SERVICES, LLC	8406255
AMAZON NATURAL TREASURES.COM, INC	8405839
Beverly National Corporation	8505474
CAPITAL FUND SERVICES, INC.	8405909
Cargill Investor Services, Inc.	8405683
CENTURY REALTY TRUST Co	8400082
CNB Bancorp, Inc.	8505383
Compushare Transfer Corporation	8406194
Endless Investments, LLC	8406178
ELECTROCHEMICAL INDUSTRIES FRUTAROM INC.	8400814
First Choice National Stock Transfer Agency Inc	8406154
FORTUNE FUND ADMINISTRATION, INC.	8405672
Francine Goodman (dba Maximvs Transfer Services)	8405926
GTI Corporate Transfer Agents LLC	8406151
Guarantee Services CORP	8406145
HOLA CORP	8406047
HOWARD JOHNSON & COMPANY	8405555
InCap Fund Administration, Inc.	8406124
International Acquisitions & Holdings, Inc.	8406164
INCORP STOCK TRANSFER INC	8406042
Lapeer County Bank & Trust Co.	8505250
Legends Financial Holding, Inc.	8505534
LIBERTY TRANSFER COMPANY	8405474
MANCHESTER BENEFITS GROUP, LTD	8405891
MANCHESTER EXCHANGE TRUST LIMITED	8405810
McGLADREY & PULLEN, LLP	8405806
Mercantile Bancorp, Inc.	8406226
NICHOLAS VITO PELLETIERE SECURITY WEST STOCK TRANSFER	8406090
NuWave eSolutions Private Limited	8406170

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] Securities Exchange Act Release No. 63211 (Oct. 29, 2010), 75 FR 68012.

[3] *Id.*

[4] 17 CFR 200.30–3(a)(22).

Transfer agent name	File No.
PACIFIC STOCK TRANSFERS INC	8406088
PUBLIC STOCK TRANSFER COMPANY dba/PUBLIC EASE	8405866
Royalty Stock Transfer	8406189
Select American Transfer Co.	8406152
Syntel, Inc.	8406142
TECHNOLOGY FUNDING CAPITAL CORPORATION	8405738
The Commercial Bank	8405867
THE NORTHERN SAVINGS & LOAN COMPANY	8405867
THE NYHART COMPANY, INC.	8405722
TRUSTMARK STOCK & TRANSFER INC	8406073
UAC INC.	8400293
Wulf International, Ltd	8406180

[FR Doc. 2011–7100 Filed 3–24–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64105; File No. SR–BX–2011–016]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness Relating to Changing the Starting Time

March 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on March 15, 2011, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules of the Exchange's equity trading facility to change the starting time from 8 a.m. Eastern Time ("ET") to 7 a.m. ET. The Exchange proposes to amend provisions of Exchange Rules 4120, 4420, 4421, 4617, 4751, 4752 and 4756 to reflect the proposed amended starting time.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=BXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain rules of the Exchange to change the starting time from 8 a.m. ET to 7 a.m. ET. More specifically, the Exchange proposes to amend the following Exchange rules in the following manner:

i. Exchange Rule 4120(b)(4)(B) to reflect that the "Pre-Market Session" means the trading session will begin at 7 a.m. ET instead of 8 a.m. ET.

ii. Exchange Rule 4420(i)(7) to reflect that the Exchange may designate each series of Portfolio Depository Receipts for trading during a pre-market session beginning at 7 a.m. instead of 8 a.m. ET.

iii. Exchange Rule 4420(j) to reflect that the Exchange may designate each series of Index Fund Shares for trading during a pre-market session beginning at 7 a.m. ET instead of 8 a.m. ET.

iv. Exchange Rule 4421(a)(2) to reflect that the information circular distributed by the Exchange prior to the commencement of trading in each UTP Derivative Security contain applicable trading hours for the UTP Derivative Security and the risks of trading beginning with the period starting from 7 a.m. ET instead of 8 a.m. ET.

v. Exchange Rule 4617 to reflect that the normal business hours for the trading platform begins at 7 a.m. ET instead of 8 a.m. ET; and, Equity Market Makers whose quotes are open before 9:30 a.m. ET or after 4 p.m. ET shall be obligated to comply, while their quotes are open, with all rules that are not by their express terms, or by an official interpretation of the Exchange, inapplicable to any part of the period 7 a.m. to 9:30 a.m. or 4 p.m. to 7 p.m. ET period instead of 8 a.m. to 9:30 a.m. or 4 p.m. to 7 p.m. ET.

vi. Exchange Rule 4751(h)(1) to reflect that System Hours Immediate or Cancel [3] orders must be will be [sic] available for entry and execution from 7 a.m. ET instead of 8 ET.

vii. Exchange Rule 4751(h)(2) to reflect that System Hours Day [4] orders must remain available for potential display and/or execution from 7 a.m. ET instead of 8 a.m. ET.

viii. Exchange Rule 4751(h)(4) to reflect that System Hours Expire Time [5] orders must remain for entry and execution from 7 a.m. ET instead of 8 a.m. ET.

ix. Exchange Rule 4751(h)(8) to reflect that "good-til-market close" [6] orders must be available for entry and potential execution from 7 a.m. ET instead of 8 ET.

x. Exchange Rule 4752(a)(1) to reflect that the system shall add in time priority all eligible Orders in accordance with each order's defined characteristics at 7 a.m. instead of 8 a.m.

xi. Exchange Rule 4756(a)(3) to reflect that orders can be entered into the System (or previously entered orders cancelled) from 7 a.m. ET instead of 8 a.m. ET.

xii. Exchange Rule 4756(b) to reflect that Equities Market Makers, Order Entry Firms, and Equities ECNs can enter quotes into the system starting at 7 a.m. ET instead of 8 a.m. ET.

The Exchange is a fully electronic system that accommodates diverse business models and trading preferences. Exchange utilizes technology to aggregate and display liquidity and make it available for execution of orders. Exchange is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "System Hours Immediate or Cancel" shall mean, for orders so designated, that if after entry into the System the order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering Participant. *See* Exchange Rule 4751(h)(1).

[4] "System Hours Day" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution from the opening of the normal business day until 7 p.m. Eastern Time on the day it was submitted unless cancelled by the entering party. *See* Exchange Rule 4751(h)(2).

[5] "System Hours Expire Time" or "SHEX" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution for the amount of time specified by the entering Participant (up to 7 p.m. on the day entered) unless canceled by the entering party. *See* Exchange Rule 4751(h)(4).

[6] "Good-til-market close" shall mean for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until 4 p.m., after which it shall be returned to the entering party. *See* Exchange Rule 4751(h)(8).

proposing to expand its operational hours to open the System earlier so that firms can enter orders and execute beginning at 7 a.m. rather than 8 a.m.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Sections 6(b)(1) and 6(b)(5) of the Act,[8] in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members, member organizations, and persons associated with members and member organizations with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposal is also consistent with Section 6 of the Act in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. An earlier open will enhance the national market system by providing market participants increased opportunity to more effectively carry out the execution of orders in the manner addressed by Exchange rules. Such improvements will enhance the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–016. 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. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2011–016 and should be submitted on or before April 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–7109 Filed 3–24–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(1), (5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 32

This document replaces and supersedes "Line of Succession Designation No. 1–A, Revision 31."

Line of Succession Designation No. 1–A, Revision 32

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) In the event of my inability to perform the functions and duties of my position, or my absence from the office, the Deputy Administrator will assume all functions and duties of the Administrator. In the event the Deputy Administrator and I are both unable to perform the functions and duties of the position or are absent from our offices, I designate the officials in listed order below, if they are eligible to act as Administrator under the provisions of the Federal Vacancies Reform Act of 1998, to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief of Staff;

(2) General Counsel;

(3) Associate Administrator for Disaster Assistance;

(4) Regional Administrator for Region 8.

(b) Notwithstanding the provisions of SBA Standard Operating Procedure 00 01 2,"absence from the office," as used in reference to myself in paragraph (a) above, means the following:

(1) I am not present in the office and cannot be reasonably contacted by phoneor other electronic means, and there is an immediate business necessity for the exercise of my authority; or

(2) I am not present in the office and, upon being contacted by phone or otherelectronic means, I determine that I cannot exercise my authority effectively without being physically present in the office.

(c) An individual serving in an acting capacity in any of the positions listed in subparagraphs (a) (1) through (4), unless designated as such by the Administrator, is not also included in this Line of Succession. Instead, the next non-acting incumbent in the Line of Succession shall serve as Acting Administrator.

(d) This designation shall remain in full force and effect until revoked or superseded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(e) Serving as Acting Administrator has no effect on the officials listed insubparagraphs (a) (1) through (4), above, with respect to their full-time position's authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Dated: March 17, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–7067 Filed 3–24–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12492 and #12493]

Ohio Disaster # OH–00026

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of OHIO dated 03/18/2011.

Incident: Severe Storms and Flooding.

Incident Period: 02/27/2011 through 03/08/2011.

Effective Date: 03/18/2011.

Physical Loan Application Deadline Date: 05/17/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/19/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Auglaize, Marion.

Contiguous Counties: Ohio:

Allen, Crawford, Darke, Delaware, Hardin, Logan, Mercer, Morrow, Shelby, Union, Van Wert, and Wyandot.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12492 6 and for economic injury is 12493 0.

The State which received an EIDL Declaration # is Ohio.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 18, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–7063 Filed 3–24–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12495 and #12496]

Illinois Disaster #IL–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Illinois (FEMA–1960–DR), dated 03/17/2011.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 01/31/2011 through 02/03/2011.

Effective Date: 03/17/2011.

Physical Loan Application Deadline Date: 05/16/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 12/19/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/17/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adams, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Cook, Crawford, Cumberland, Dekalb, Douglas, Dupage, Edgar, Effingham, Fayette, Ford, Fulton, Hancock, Henderson, Henry, Jasper, Jo Daviess, Kane, Knox, La Salle, Lake, Lee, Logan, Marion, Marshall, Mason, Mcdonough, Mchenry, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Pike, Putnam, Richland, Rock Island, Schuyler, Scott, Shelby, Stark, Tazewell, Warren, Washington, Whiteside, Will, Winnebago, Woodford.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12495B and for economic injury is 12496B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–7064 Filed 3–24–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections and a collection in use without an OMB number.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 24, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *Supplemental Security Income (SSI)—Quality Review Case Analysis—0960–0133.* To assess the SSI program and ensure the accuracy of its payments, SSA conducts legally mandated periodic SSI case analysis quality reviews. SSA uses Form SSA–8508 to conduct these reviews, collecting information on operating efficiency, the quality of underlying policies, and the effect of incorrect payments. SSA also uses the data to determine SSI program payment accuracy rates, which is a performance measure for the agency's service delivery goals. The respondents are recipients of SSI payments selected for the quality reviews.

Type of Request: Revision of an OMB-approved information collection.

Form	Number of respondents	Frequency of response	Response time (minutes)	Estimated annual burden (hours)
SSA–8508–BK (paper interview)	225	1	60	225
SSA–8508–BK (electronic)	4,275	1	60	4,275
Totals	4,500			4,500

2. *Information Collections Conducted by State Disability Determination Services (DDS) on Behalf of SSA—20 CFR, subpart P, 404.1503a, 404.1512, 404.1513, 404.1514 404.1517, 404.1519; 20 CFR subpart Q, 404.1613, 404.1614, 404.1624; 20 CFR subpart I, 416.903a, 416.912, 416.913, 416.914, 416.917, 416.919 and 20 CFR subpart J, 416.1013, 416.1024, 416.1014—0960–0555.* State DDSs collect the information necessary to administer the Social Security Disability Insurance (SSDI) and SSI programs. They collect medical evidence from consultative exam (CE) sources, credential information from CE source applicants, and Medical Evidence of Record (MER) from claimants' medical sources. The DDSs collect information from claimants regarding medical treatment and pain/symptoms. The respondents are medical providers, other sources of MER, and disability claimants.

Type of Request: Revision of an OMB-approved information collection.

CE Collections

There are two collections from CE providers: (a) Medical evidence about claimants' medical condition(s) that DDSs use to make disability determinations when the claimant's own medical sources cannot or will not provide the required information; and (b) proof of credentials from CE providers.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
(a) Medical Evidence from CE Providers:				
Paper Submissions	100,000	1	30	50,000
Electronic Records Express (ERE) Submissions	3,500,000	1	10	583,333
Totals	4,600,000			633,333
(b) CE Credentials:				
Paper Submission	3,000	1	15	750

There are two CE claimant collections: (a) Claimant completion of a response form indicating whether they intend to keep their CE appointment:, and (b) claimant completion of a form indicating whether they want a copy of the CE report sent to their doctor.

Type of CE claimant collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Appointment Letter	2,500,000	1	5	208,333
Claimants re: Report to Medical Provider	1,500,000	1	5	125,000
Totals	4,000,000			333,333

MER Collections

The DDSs collect MER from the claimant's medical sources to determine the claimant's physical or mental status prior to making a disability determination.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submissions	500,000	1	15	125,000
Electronic and ERE Submissions	5,500,000	1	7	641,666
Total	6,000,000			766,666

Pain/Other Symptoms Information from Claimants

The DDSs use information about pain/symptoms to determine how pain/symptoms affect the claimant's ability to do work–related activities prior to making a disability determination.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper Submission	2,500,000	1	15	625,000

The total combined burden is 2,359,082 hours.

II. SSA submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 25, 2011. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *Request for Waiver of Overpayment Recovery or Change in Repayment Notice—20 CFR 404.502–404.513, 404.515 and 20 CFR 416.550–416.570, 416.572—0960–0037.* When Social Security beneficiaries and SSI recipients receive an overpayment, they must return the amount of the overpayment. These beneficiaries and recipients can use Form SSA–632–BK to take one of three actions: (1) Request an exemption from repaying, as recovery of the overpayment would cause financial hardship; (2) inform SSA they want to repay the overpayment at a monthly rate over a period longer than 36 months; or (3) request a different rate of recovery. In the latter two cases, the respondents must also provide financial information to help the agency determine how much the overpaid person can afford to repay each month. Respondents are overpaid Social Security beneficiaries or SSI recipients who are requesting a waiver of recovery of an overpayment or a lesser rate of withholding.

Type of Request: Revision of an OMB-approved information collection.

Type of request	Number of respondents	Frequency of response	Response time (minutes)	Total burden (hours)
Waiver of Overpayment (Completes Whole Paper Form)	400,000	1	120	800,000
Change in Repayment (Completes Partial Paper Form)	100,000	1	45	75,000
Regional Application (NY Debt Management-NYDM)	44,000	1	120	88,000
Internet Instructions	500,000	1	5	41,667
Totals	1,044,000			1,004,667

2. *Sheltered Workshop Wage Reporting—0960–0771.* Sheltered workshops are nonprofit organizations or institutions that implement a recognized program of rehabilitation for workers who have handicaps, or provide such workers with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature. Sheltered workshops perform a service for their clients by reporting monthly wages directly to SSA. SSA uses the information these workshops provide to verify and post monthly wages to the SSI recipient's record. Most workshops report monthly wage totals to their local SSA office so we can adjust the client's SSI payment amount in a timely manner and prevent overpayments. Sheltered workshops are motivated to report wages voluntarily as a service to their clients. Respondents are sheltered workshops that report monthly wages for services performed in the workshop.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 900.

Frequency of Response: 12.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 3,000 hours.

3. *Request for Medical Treatment in an SSA Employee Health Facility: Patient Self-Administered or Staff-Administered Care—0960–0772.* SSA's Employee Health Clinic (EHC) provides emergency care, treatment of on-the-job illnesses and injuries, and health care for employees with chronic medical conditions and allergies who require allergy antigens. SSA also permits employees to use the EHC for self-administration of medical treatments for a chronic health condition. SSA collects information on Form SSA–5072 to approve or deny requests for medical treatment in an SSA EHC. The respondents are the private physicians of the SSA employees seeking medical treatment in an SSA EHC.

Type of Request: Information Collection in Use without an OMB Number.

Medication dosage changes	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
Annually	25	1	5	2
Bi-Annually	75	2	5	13
Totals	100			15

Dated: March 22, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–7123 Filed 3–24–11; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and an extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCBFM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 24, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *Questionnaire about Employment or Self-Employment outside the United States—20 CFR 404.401(b)(1), 404.415 & 404.417—0960–0050.* SSA collects information on the SSA–7163 to determine: (1) Whether work beneficiaries performed outside the United States is cause for deductions from their monthly benefits; (2) which of two work tests (foreign or regular test) is applicable; and (3) the number of months, if any, SSA should impose deductions. Respondents are beneficiaries living and working outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 4,000 hours.

2. *Statement of Income and Resources—20 CFR 416.207, 146.301–416.310, 416.704, and 416.708–0960–0124.* SSA collects information about income and resources on the SSA–8010–BK for Supplemental Security Income (SSI) claims and redeterminations. SSA uses the information to make initial or continuing eligibility determinations for SSI claimants or recipients who are subject to deeming. The respondents are persons whose income and resources SSA may deem (consider to be available) to SSI applicants or recipients.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 341,000.

Frequency of Response: 1.

Average Burden per Response: 26 minutes.

Estimated Annual Burden: 147,767 hours.

3. *Review of the Disability Hearing Officer's Reconsidered Determinations before It Is Issued—20 CFR 404.913–404.918, 404.1512–404.1515, 404.1589, 416.912–416.915, 416.989, 416.1413–416.1418, 404.918(d) and 416.1418(d)—0960–0709.* After SSA approves

claimants for Social Security disability benefits or SSI payments, SSA periodically conducts a continuing disability review (CDR). During a CDR, the agency reviews claimants' status to see if their condition improved to the point they are capable of working, and if so, to reduce or stop their benefits or payments. If SSA notifies a claimant the agency will stop benefits or payments, the claimant may appeal the determination. The first appeal gives the claimant the opportunity for a full evidentiary hearing before a disability hearing officer (DHO).

For quality review purposes, a Federal component reviews a small sample of the DHO's determinations. It is rare for the reviewing component to reverse a DHO determination favorable to the claimant. Before SSA can issue an unfavorable determination, we give the claimant 10 days to provide a written statement explaining why SSA should not stop payments. The written statement is the information SSA collects in this process. Respondents are CDR claimants whose payments may cease.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 8.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Annual Burden: 8 hours.

II. SSA submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 25, 2011. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *Application for Survivors Benefits—20 CFR 404.611(a) and (c)—0960–0062.* Surviving family members of armed services personnel can file for Social Security and veterans' benefits at SSA or the Veterans Administration (VA). Applicants file for title II survivor benefits at the VA by completing the SSA–24. The VA forwards the form to SSA for processing. SSA uses the information to determine eligibility for benefits. The respondents are survivors of deceased armed services personnel who are applying for benefits at the VA.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,200.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 800 hours.

2. *Employee Work Activity Questionnaire—20 CFR 404.1574, 404.1592—0960–0483.* Social Security disability beneficiaries and SSI recipients qualify for payments when a verified physical or mental impairment prevents them from working. If disability claimants attempt to return to work after receiving payments, but are unable to continue working, they submit the SSA–3033, Employee Work Activity Questionnaire, so SSA can evaluate their work attempt. SSA also uses this form to evaluate unsuccessful subsidy work and determine applicants' continuing eligibility for disability payments. The respondents are employers of Social Security disability beneficiaries and SSI recipients who unsuccessfully attempted to return to work.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 15,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 3,750 hours.

Dated: March 22, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–7124 Filed 3–24–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7385]

60-Day Notice of Proposed Information Collection: Agency Form DS–4127, NEA/PI Online Performance Reporting System (PRS), OMB Control Number 1405–0183.

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* NEA/PI Online Performance Reporting System (PRS).
- *OMB Control Number:* 1405–0183.
- *Type of Request:* Renewal.
- *Originating Office:* NEA/PI.
- *Form Number:* DS–4127.
- *Respondents:* Recipients of NEA/PI grants.
- *Estimated Number of Respondents:* 70 respondents annually.
- *Estimated Number of Responses:* 280 per year.
- *Average Hours Per Response:* 20.
- *Total Estimated Burden:* 5,600 hours per year.
- *Frequency:* Quarterly.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from March 25, 2011.

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

- *E-mail: mepidatabasecomments@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Catherine Bourgeois, Deputy Director, U.S. Department of State, Office of the Middle East Partnership Initiative (NEA/PI), Bureau of Near Eastern Affairs, NEA Mail Room—Room 6258, 2201 C St., NW., Washington, DC 20520.
- *Fax:* 202–647–8445.
- *Hand Delivery or Courier:* 2430 E St., NW. (23rd and D St., NW.), Navy Hill—SA–4—Central, Second Floor, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Please direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Neil Stormer, U.S. Department of State, Office of the Middle East Partnership Initiative (NEA/PI), Bureau of Near Eastern Affairs, NEA Mail Room—Room 6258, 2201 C St., NW., Washington, DC 20520, who may be reached on 202–776–8595 or at *stormernc@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Since 2002, MEPI has obligated more than $600 million to over 550 organizations,

which carry out more than 850 projects in support of political, economic, education and women's rights reform in 20 countries of the Middle East and North Africa. As a normal course of business and in compliance with OMB Guidelines contained in Circular A–110, recipient organizations are required to provide, and the U.S. State Department is required to collect, periodic program and financial performance reports. The responsibility of the State Department to track and monitor the programmatic and financial performance necessitates a database that can help facilitate this in a consistent and standardized manner. The MEPI Performance Reporting System (PRS) enables enhanced monitoring and evaluation of grants through standardized collection and storage of relevant award elements, such as quarterly progress reports, workplans, results monitoring plans, grant agreements, financial reports, and other business information related to MEPI implementers. The PRS streamlines communication with implementers and allows for rapid identification of information gaps for specific projects.

Methodology: Information will be entered into PRS electronically by respondents. Non-respondents will submit their quarterly reports on paper.

Additional Information:

Dated: March 17, 2011.

Catherine Bourgeois,

Deputy Director, Bureau of Near Eastern Affairs, NEA/PI, Department of State.

[FR Doc. 2011–7101 Filed 3–24–11; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 7388]

Culturally Significant Objects Imported for Exhibition Determinations: "Seeing Gertrude Stein: Five Stories"

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 "Seeing Gertrude Stein: Five Stories," 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 Contemporary Jewish Museum, San Francisco, California, from on or about May 12, 2011, until on or about September 6, 2011, the National Portrait Gallery, Washington, DC from on or about October 14, 2011, until on or about January 22, 2012, 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: March 18, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–7103 Filed 3–24–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Passenger Facility Charge (PFC) Application 11–11–C–00–BUR, To Impose and Use PFC Revenue at Bob Hope Airport, Burbank, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Bob Hope Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 25, 2011.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John T. Hatanaka, Senior Deputy Executive Director, Burbank-Glendale-Pasadena Airport Authority, at the following address: 2627 Hollywood Way, Burbank, CA 91505. Air carriers and foreign air carriers may submit copies of written comments previously provided to Burbank-Glendale-Pasadena Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Darlene Williams, Airport Planner/PFC Specialist, Los Angeles Airports District Office, 15000 Aviation Blvd., Room 3000, Lawndale, CA 90261, Telephone: (310) 725–3625. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Bob Hope Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On March 9, 2011, the FAA determined that the application to impose and use PFC submitted by Burbank-Glendale-Pasadena Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 7, 2011.

The following is a brief overview of the impose and use application No. 11–11–C–00–BUR:

Proposed charge effective date: April 1, 2016.

Proposed charge expiration date: October 1, 2020.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $35,000,000.

Description of Proposed Impose and Use Project

Regional Intermodal Transportation Center (RITC)—Phase 1. This project will construct a transportation access center and related improvements on a six-acre portion of the parking lot in the southeastern area of the airport. The first phase of the project will include approximately 1,475 feet of an elevated walkway between the RITC and the terminal complex; a multi-level transit station that will include consolidated rental car facilities and bus pickup and drop off facility; approximately 55,000 square feet of ground access center for shuttle operators and off-airport hotel vans; pedestrian crosswalk across Empire Avenue to connect the train station with the RITC; and two-level parking structure.

Class or Classes of Air Carriers Which the Public Agency Has Requested Not be

Required to Collect PFCS: Nonscheduled/on demand air carriers, filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Burbank-Glendale-Pasadena Airport Authority.

Issued in Lawndale, California, on March 16, 2011.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 2011–7062 Filed 3–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Marv Skie-Lincoln County Airport; Tea, SD

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of 1.109 acres of the airport property at the Marv Skie-Lincoln County Airport, Tea, South Dakota. The proposal consists of the trade of unimproved land on the east side of the airport owned by the County of Lincoln for an equal parcel of land located on the west side of the airport.

The acreage being released is not needed for aeronautical use as currently identified on the Airport Layout Plan. There are no impacts to the airport by allowing the County to trade properties. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

DATES: Comments must be received on or before April 25, 2011.

ADDRESSES: Mr. David P. Anderson, Program Manager, Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota, 58504.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Anderson, Program Manager, Bismarck Airports District Office, 2301 University Drive, Building 23B, Bismarck, North Dakota. Telephone Number (701) 323–7380/FAX Number (701) 323–7399. Documents reflecting this FAA action may be reviewed at this same location or at the Lincoln County States Attorneys Office, 104 North Main Street, Suite 200, Canton, South Dakota.

SUPPLEMENTARY INFORMATION: Following is a description of the subject airport property to be released at the Marv Skie-Lincoln County Airport.

This property for release is for a land trade at the Marv Skie-Lincoln County Airport owned by the County of Lincoln, South Dakota. The property for release was originally acquired under Airport Improvement Program grant number 3–46–0078–001–1988. This 1.109 acres is located in Southeast Quarter of the Northwest Quarter of Section 30, Township 100 North, Range 50 West of the 5th Principle Meridian.

Said parcel subject to all easements, restrictions, and reservations of record.

Issued in Bismarck, North Dakota, on February 28, 2011.

Thomas T. Schauer,

Manager, Bismarck Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2011–7058 Filed 3–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

Hours of Service (HOS) of Drivers; Assessing the Safety Impact of the Exemption From the 14-Hour Provision of the Hours of Service Rule for Certain Pyrotechnics Operations During Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: FMCSA requests public comment from all interested parties on the impact of the Agency's previous decision granting certain members of the American Pyrotechnics Association (APA) an exemption from the current HOS prohibition against driving a commercial motor vehicle (CMV) after the 14th hour of coming on duty (*i.e.,* the 14-hour Provision), provided their drivers did not operate CMVs after accumulating 14 hours on duty. The exemption covers certain pyrotechnics carriers and drivers for a period that begins 7 days prior to Independence Day and ends 2 days immediately following that holiday. The Agency initially granted a waiver from the 14-hour Provision in 2004, and granted an exemption from the 14-hour Provision in 2005 with subsequent renewals in 2007 and 2009. FMCSA requests public comment on the safety impact of the exemption during the Independence Day periods of 2004 through 2010.

DATES: Comments must be received on or before April 25, 2011.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2007–28043 by any of the following methods:

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

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, 20590 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or visit the U.S. Department of Transportation Docket Management Facility at the street address listed above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://*

edocket.access.gpo.gov/2008/pdfE8-794.pdf.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Thomas Yager, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, 401–404, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide FMCSA with authority to grant exemptions from its safety regulations. On December 8, 1998, the Federal Highway Administration's Office of Motor Carriers, the predecessor to FMCSA, published an interim final rule implementing section 4007 (63 FR 67600). On August 20, 2004, FMCSA published a Final Rule (69 FR 51589) on this subject. Pursuant to that rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR part 381). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted (49 CFR 381.315(a)). The Agency must also provide an opportunity for public comment on the request. *Id.*

The Agency must then examine the safety analyses and the public comments, and determine whether the exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation (49 CFR 381.305, 381.310(c)(5)). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so (49 CFR 381.315(c)(2)). If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption, and the regulatory provision or provisions from which an exemption is being granted (49 CFR 381.315(c)(1)). The notice must also specify the effective period of the exemption (up to two years), and explain the terms and conditions of the exemption. *Id.* The exemption may be renewed (49 CFR 381.300(b)).

APA's Independence Day Operations and the Exemption from 49 CFR 395.3(a)(2)

APA is a trade association that represents the domestic fireworks industry. Its members have been providing fireworks-related services for many years.

The CMV drivers employed by APA members transport fireworks over relatively short distances from distribution points to the sites of Independence Day fireworks displays. These trips normally take place in the early morning when motor vehicle traffic is light. APA members' drivers are also trained pyrotechnicians, and at the display site, they set up and safety-check the fireworks. In the late afternoon and early evening prior to the fireworks event, these drivers have time off duty in which to rest or nap. After the event, the drivers load the CMV and perform additional driving tasks. This final movement of the day takes place late in the evening on roads relatively free of heavy motor vehicle traffic. Before beginning the next duty day, these drivers must take at least 10 consecutive hours off-duty, in accordance with the HOS rules applicable to all drivers of property-carrying CMVs (49 CFR 395.3(a)).

In 2003, FMCSA amended its HOS rules for CMV drivers (68 FR 22456, April 28, 2003), adopting a rule that prohibited interstate drivers of property-carrying CMVs from driving after the end of the 14th hour after they came on duty following 10 consecutive hours off duty (49 CFR 395.3(a)(2)). This 14-hour provision impacted the operations of APA's members with respect to the services they provide for Independence Day celebrations because drivers could no longer drive after the 14th hour of coming on duty, following 10 consecutive hours off duty.

Under the previous HOS rules, drivers were not limited by a block of time within which all driving had to be completed. Driving was prohibited after drivers accumulated 15-hours of on-duty time (including any driving time) but the prohibition against driving was not linked to the beginning of the work day. Rest breaks or off-duty periods during the workday enabled drivers to operate their CMVs after the fireworks events. However, under the 2003 final rule, driving after the 14th hour from the beginning of the work day was prohibited; rest breaks or off-duty periods could no longer be used to extend the timeframe during which driving could occur.

Through the exemption process under 49 CFR part 381, APA requested that fireworks personnel be allowed to exclude off-duty and sleeper berth time of any length in the calculation of the 14-hour rule. APA believes that full compliance with the current HOS regulations during the brief period surrounding Independence Day would impose a substantial economic hardship on its members that operate fireworks for the public. This period is the busiest time of the year for certain APA members because the companies are hired to conduct multiple fireworks shows in celebration of Independence Day, during a compressed timeframe. Without the exemption, pyrotechnicians cannot meet typical holiday schedules, and fireworks companies would be forced to hire a second driver for most trips or, significantly decrease their engagements. APA argues both options are economically detrimental for its members, and would deny many Americans the primary component of their Independence Day celebration.

APA first applied for relief from § 395.3(a)(2) for the 2004 Independence Day celebrations. FMCSA granted APA a waiver on behalf of its members. A copy of the 2004 waiver is in the docket referenced at the beginning of this notice.

The following year, the APA submitted an application for an exemption that would cover two consecutive Independence Day celebrations—2005 and 2006. FMCSA published a notice in the **Federal Register** announcing the application and seeking public comment on it (70 FR 24160; May 6, 2005). After the close of the comment period, FMCSA published a notice of its final decision on July 1, 2005. The Agency granted an exemption from the 14-hour Provision under § 395.3(a)(2)) to designated APA-member motor carriers and their CMV drivers for two 9-day periods during the 2005 and 2006 Independence Day holidays, subject to specific terms and conditions of the exemption (70 FR 38242, July 1, 2005).

On June 28, 2007, FMCSA published an exemption applicable to certain APA members operating property-carrying CMVs in furtherance of fireworks displays for two 9-day periods during the 2007 and 2008 Independence Day holidays (72 FR 35538). And, on June

19, 2009, FMCSA published a notice granting a similar exemption to certain APA members for two 9-day periods during the 2009 and 2010 Independence Days (74 FR 29264).

In each case, FMCSA found that the terms and conditions of the exemption would ensure that APA members' operations were likely to achieve a level of safety equivalent to, or greater than, the level of safety the operations would obtain in the absence of the exemption.

Annually, the exemption has permitted approximately 3,000 CMV drivers employed by APA members to exclude off-duty and sleeper-berth time of any length from their calculations of compliance with the 14-hour provision following 10 consecutive hours off duty. For all operations not subject to the exemption, the drivers and motor carriers remain subject to the 11-hour driving time limit, the 60-hour (or 70-hour) on-duty limit, and all other HOS rules. The exemption from 49 CFR 395.3(a)(2) has been limited to a roster of APA-member motor carriers, and to a period of 9 consecutive days each year. During these 9 days, driving outside of the 14-hour driving window would be allowed, provided the driver did not operate CMVs after accumulating 14 hours on duty.

Advocates for Highway and Auto Safety (Advocates) June 5, 2009, Comments

During the exemption renewal process in 2009, FMCSA's June 19, 2009, notice did not acknowledge or respond to comments submitted by Advocates. Although Advocates timely filed its comments on June 5, 2009, prior to the June 8, 2009, deadline for responding to the Agency's May 22, 2009, notices (74 FR 24066 and 74 FR 24069) those comments were not available at *http://www.regulations.gov*, the web site at which docket comments are posted, until June 10, 2009. By the time the personnel responsible for managing this web site for all Federal regulatory matters had posted Advocates' comments to the electronic docket, FMCSA staff had prepared its draft notice of final disposition and submitted it to FMCSA's senior leadership for approval. The notice of final disposition was subsequently issued on June 12, 2009, and published on June 19, 2009.

FMCSA reviews all public comments as of the filing deadline for purposes of analyzing comments. However, as in this case, because of the time constraints for issuing a decision in time for the 2009 Independence Day Celebration, there was no review of Advocates' comments posted at *http://www.regulations.gov* two days after the deadline. In consideration of the administrative delay in the posting of Advocates' comments to the public docket, FMCSA now requests public comment on the safety impact of the exemption prior to consideration of any subsequent requests for renewal of the exemption.

Interested parties may view the APA applications for the exemptions and the exemption renewals, the public comments the Agency received, including the Advocates comments dated June 5, 2009, and FMCSA's **Federal Register** notices by following the instructions under the heading "Docket" above: For the 2005 exemption, please refer to Docket FMCSA–2005–21104, and for the 2007 and 2009 exemptions, refer to Dockets FMCSA–2007–28090 and FMCSA–2007–28043, respectively.

Request for Comments

FMCSA requests public comment from all interested parties on the impact the exemptions have had on the safety performance of the drivers and carriers covered by the exemption. Interested parties are encouraged to submit any information concerning crashes and any fatalities, injuries and property damage associated with those crashes that occurred during the periods the exemptions were in place. FMCSA will review all comments received and consider them in the decision-making process should the APA apply for a renewal of the exemption.

Issued on: March 21, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–7009 Filed 3–24–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Meeting of the Transit Rail Advisory Committee for Safety (TRACS)

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Transit Rail Advisory Committee for Safety (TRACS). TRACS is a Federal Advisory Committee established by the Secretary of Transportation in accordance with the Federal Advisory Committee Act to provide information, advice, and recommendations to the Secretary and the Federal Transit Administrator on matters relating to the safety of public transportation systems.

DATES: The TRACS meeting will be held on April 27, 2011, from 9 a.m. to 5 p.m., and April 28, 2011, from 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton Hotel, 1201 K Street, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Iyon Rosario, Office of Safety and Security, Federal Transit Administration, Room E43–434, 1200 New Jersey Avenue, SE., Washington, DC, 20590, 202–366–2010; *TRACS@dot.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2). As noted above, TRACS is a Federal Advisory Committee established to provide information, advice, and recommendations to the Secretary of Transportation and the Administrator of the Federal Transit Administration on matters relating to the safety of public transportation systems. TRACS is composed of 21 members representing a broad base of expertise necessary to discharge its responsibilities. The first meeting of TRACS was held on September 9–10, 2010. The tentative agenda for the second meeting of TRACS (being held April 27–28, 2011), is set forth below:

Agenda

April 27–28, 2011

(1) Opening Remarks
(2) Safety Briefing
(3) Discussion of Working Group 01 and Working Group 02 Draft Letter Reports
(4) Review of New Task Statement
(5) Public Comment
(6) Closing Remarks

This meeting will be open to the public. Members of the public who wish to make an oral statement at the meeting or are seeking special accommodations, are directed to make a request to Iyon Rosario, Office of Safety and Security, FTA; (202) 366–2010; or at *TRACS@dot.gov* on or before the close of business on April 20, 2011. Provisions will be made to include oral statements on the agenda. Members of the public may submit written comments or suggestions concerning the activities of TRACS at any time before or after the meeting at *TRACS@dot.gov*; or to U.S. Department of Transportation, Federal Transit Administration, Office of Safety and Security, Room E43–435, 1200 New Jersey Avenue, SE., Washington, DC 20590, *Attention:* Iyon Rosario. Information from the meeting

will be posted on FTA's public Web site at *http://www.fta.dot.gov/or http://fta.dot.gov/11039_11052.htm.* Written comments submitted to TRACS will also be posted at the above Web address.

Issued on March 21, 2011.

Peter Rogoff,

Administrator.

[FR Doc. 2011–7027 Filed 3–24–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of One Specially Designated Global Terrorist Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is removing the name of one individual, whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism,* from the list of Specially Designated Nationals and Blocked Persons ("SDN List").

DATES: The removal of this individual from the SDN List is effective as of March 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.

SUPPLENTARY IMFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is Available via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c, imposing economic sanctions on persons who commit, threaten to commit, or support acts of terrorism. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and (pursuant to Executive Order 13284) the Secretary of the Department of Homeland Security, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13224.

The Department of the Treasury's Office of Foreign Assets Control has determined that this individual should be removed from the SDN List.

The following designation is removed from the SDN List:

PITONO, Joko (a.k.a. ABDUL MARTIN; a.k.a. ABDUL MATIN; a.k.a. AMAR UMAR; a.k.a. AMAR USMAN; a.k.a. ANAR USMAN; a.k.a. DJOKO SUPRIYANTO; a.k.a. DUL MATIN; a.k.a. DULMATIN; a.k.a. JAK IMRON; a.k.a. MUKTAMAR; a.k.a. NOVARIANTO; a.k.a. PINTONO, Joko; a.k.a. PITOYO, Joko; a.k.a. TOPEL); DOB 16 Jun 1970; alt. DOB 6 Jun 1970; POB Petarukan village, Pemalang, Central Java, Indonesia; nationality Indonesia (individual) [SDGT]

The removal of this individual's name from the SDN List is effective as of March 17, 2011. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: March 17, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–7096 Filed 3–24–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–21

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–21, Debt Roll-Ups.

DATES: Written comments should be received on or before May 24, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the 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: Debt Roll-Ups.

OMB Number: 1545–1647.

Revenue Procedure Number: Revenue Procedure 2001–21.

Abstract: Revenue Procedure 2001–21 provides for an election that will facilitate the consolidation of two or more outstanding debt instruments into a single debt instrument. Under the election, taxpayers can treat certain exchanges of debt instruments as realization events for Federal income tax purposes even though the exchanges do not result in significant medications under section 1.1001–3 of the Income Tax Regulations.

Current Actions: There are no changes to the paperwork burden relating to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all 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 21, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–6997 Filed 3–24–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208156–91]

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–208156–91 (TD 8929), Accounting for Long-Term Contracts (§ 1.460–1).

DATES: Written comments should be received on or before May 24, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the 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: Accounting for Long-Term Contracts.

OMB Number: 1545–1650.

Regulation Project Number: REG–208156–91.

Abstract: The regulation requires the Commissioner to be notified of a taxpayer's decision to sever or aggregate one or more long-term contracts under the regulations. The statement is needed so the Commissioner can determine whether the taxpayer properly severed or aggregated its contract(s). The regulations affect any taxpayer that manufactures or constructs property under long-term contracts.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of s currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 12,500.

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 21, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–7111 Filed 3–24–11; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—March 30, 2011 Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: William A. Reinsch, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China."

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on March 30, 2011, to address "Chinese State-Owned Enterprises and U.S.-China Bilateral Investment."

Background: This is the fourth public hearing the Commission will hold during its 2011 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The March 30 hearing will examine the nature and activities of state-owned enterprises in the People's Republic of China as well as the patterns and implications of bilateral investment between the United States and China. The March 30 hearing will be co-chaired by Vice Chairman Daniel Slane and Commissioner Michael Wessel.

Any interested party may file a written statement by March 30, 2011, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Transcripts of past Commission public hearings may be obtained from the USCC Web site *http://www.uscc.gov.*

DATE AND TIME: Wednesday, March 30, 2011, 8:45 a.m. to 2:30 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* as soon as available.

ADDRESSES: The hearing will be held on Capitol Hill in Room 538 of the Dirksen Senate Office Building, located at Constitution Avenue and 1st Street, NE. in Washington, DC 20002. Public seating is limited to about 50 people on a first come, first served basis. *Advance reservations are not required.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Michael Danis, Executive Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; *phone:* 202–624–1407, or via e-mail at *contact@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: March 22, 2011.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2011–7129 Filed 3–24–11; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0139]

Agency Information Collection (Notice—Payment Not Applied) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 25, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0139" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0139."

SUPPLEMENTARY INFORMATION:

Title: Notice—Payment Not Applied, VA Form 29–4499a.

OMB Control Number: 2900–0139.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–4499a is used by policy holders to reinstate their National Service Life Insurance (NSLI) policy. The information collected is used to determine the insurer's eligibility for reinstatement to government life insurance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 14, 2011, at pages 2757–2758.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: March 21, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–7028 Filed 3–24–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0660]

Proposed Information Collection (Request for Contact Information); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to obtain contact information on individuals residing in a remote location.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 24, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0660" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility;

(2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Contact Information, VA Form 21–30.

OMB Control Number: 2900–0660.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–30 is used to locate individuals when contact information cannot be obtained by other means or when travel funds may be significantly impacted in cases where an individual resides in a remote location and is not home during the day or when visited. VA uses the data collected determine whether a fiduciary of a beneficiary is properly executing his or her duties.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,000.

Dated: March 21, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–7029 Filed 3–24–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0668]

Proposed Information Collection (Supplemental Income Questionnaire (for Philippine Claims Only)); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine Philippine claimants' eligibility for pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 24, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0668" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supplemental Income Questionnaire (for Philippine Claims Only), VA Form 21–0784.

OMB Control Number: 2900–0668.

Type of Review: Extension of a currently approved collection.

Abstract: Philippine claimants residing in the Philippine complete VA Form 21–0784 to report their countable family income and net worth. VA uses the information to determine the claimant's entitlement to pension benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 30 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 120.

Dated: March 21, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–7030 Filed 3–24–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0114]

Proposed Information Collection (Statement of Marital Relationship); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on the information needed to determine the validity of a common law marriage.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 24, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0114" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Marital Relationship, VA Form 21–4170.

OMB Control Number: 2900–0114.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4170 is completed by individuals claiming to be common law widows/widowers of deceased veterans and by veterans and their claimed common law spouses to establish marital status. VA uses the information collected to determine whether a common law marriage was valid under the law of the place where the parties resided at the time of the marriage or under the law of the place where the parties resided when the right to benefits accrued.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,708 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 6,500.

Dated: March 21, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–7031 Filed 3–24–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0394]

Proposed Information Collection (Certification of School Attendance—REPS); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to verify beneficiaries receiving Restored Entitlement Program for Survivors (REPS) benefits are actually in enrolled an approved school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 24, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0394" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of School Attendance—REPS, VA Form 21–8926.

OMB Control Number: 2900–0394.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8926 is used to verify beneficiaries receiving REPS benefits based on schoolchild status are in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The program pays benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. Beneficiaries over age 18 and under age 23 must be enrolled full–time in an approved post-secondary school at the beginning of the school year to continue receiving REPS benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,200.

Dated: March 21, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–7032 Filed 3–24–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0031]

Proposed Information Collection (Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the

proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine a claimant's eligibility for specially adapted housing grant.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 24, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0031" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

OMB Control Number: 2900–0031.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans complete VA Form 26–4555c to apply for specially adapted housing grant. VA will use the data collected to determine if it is economically feasible for a veteran to reside in specially adapted housing and to compute the proper grant amount.

Affected Public: Individuals or households.

Estimated Annual Burden: 350 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,400.

Dated: March 21, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–7033 Filed 3–24–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0179]

Agency Information Collection (Application for Change of Permanent Plan (Medical)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 25, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0179" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0179."

SUPPLEMENTARY INFORMATION:

Title: Application for Change of Permanent Plan (Medical) (Change to a policy with a lower reserve value), VA Form 29–1549.

OMB Control Number: 2900–0179.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to establish his/her eligibility to change insurance plans from a higher reserve to a lower reserve value.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 14, 2011, at page 2757.

Affected Public: Individuals or households.

Estimated Annual Burden: 14 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28.

Dated: March 21, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–7034 Filed 3–24–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Friday,

No. 58 March 25, 2011

Part II

Federal Reserve System

12 CFR Part 229

Availability of Funds and Collection of Checks; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1409]

RIN No. 7100–AD68

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule, request for comment.

SUMMARY: The Board of Governors (Board) is proposing amendments to facilitate the banking industry's ongoing transition to fully-electronic interbank check collection and return, including proposed amendments to condition a depositary bank's right of expeditious return on the depositary bank agreeing to accept returned checks electronically either directly or indirectly from the paying bank. The Board also is proposing amendments to the funds availability schedule provisions to reflect the fact that there are no longer any nonlocal checks. The Board proposes to revise the model forms that banks may use in disclosing their funds-availability policies to their customers and to update the preemption determinations. Finally, the Board is requesting comment on whether it should consider future changes to the regulation to improve the check collection system, such as decreasing the time afforded to a paying bank to decide whether to pay a check in order to reduce the risk to a depositary bank of having to make funds available for withdrawal before learning whether a deposited check has been returned unpaid.

DATES: Comments on the proposed rule must be received not later than June 3, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1409 and RIN No. 7100–AD68, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Dena L. Milligan, Attorney, (202/452–3900), Legal Division; or Joseph P. Baressi, Financial Services Project Leader (202/452–3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

Regulation CC (12 CFR part 229) implements the Expedited Funds Availability Act (EFA Act) and the Check Clearing for the 21st Century Act (Check 21 Act).[1] The Board implemented the EFA Act in subparts A, B, and C of Regulation CC. The EFA Act was enacted to provide depositors of checks with prompt funds availability and to foster improvements in the check collection and return processes. Subpart A of Regulation CC contains general information, such as definitions of terms. Subpart B of Regulation CC specifies availability schedules within which banks must make funds available for withdrawal. Subpart B also includes rules regarding exceptions to the schedules, disclosure of funds availability policies, and payment of interest. These provisions implement specific requirements set forth in the EFA Act. The provisions of subpart C were adopted by the Board pursuant to the authority granted to it in §§ 609(b) and (c) of the EFA Act.[2] Section 609(b) directs the Board to consider requiring that depository institutions and Federal Reserve Banks take certain steps to improve the check-processing system, such by taking steps necessary to automate the check-return process (§ 609(b)(4)).[3] Section 609(c) grants the Board authority to regulate any aspect of the payment system and any related function of the payment system with respect to checks.[4] Subpart C includes rules to speed the collection and return of checks, such as rules covering the expeditious return responsibilities of paying and returning banks, authorization of direct returns, notification of nonpayment of large-dollar returns, check indorsement standards, and same-day settlement of checks presented to the paying bank.

Subpart C's provisions presume that banks generally handle checks in paper form. Since the provisions were adopted in 1988, however, banks have largely migrated to an electronic interbank check collection and return system.[5] This migration was facilitated by the Check 21 Act,[6] which became effective in October 2004 and is implemented in subparts A and D of Regulation CC. The Check 21 Act permits banks to use a properly prepared substitute check in place of the original check, which enables banks to take the original check out of the collection and return process and to handle check images for much of the check collection and return process without having to retain the original check. The Check 21 Act has been a catalyst for rapid growth in banks' electronic handling of checks over the last 5 years. For example, at year-end 2005, the Reserve Banks received about 4 percent of checks deposited with them for collection in electronic form and presented approximately 28 percent of their checks in electronic form.[7] In December 2010, the Reserve Banks received about 99.7 percent of checks deposited for forward collection electronically, and presented about 98.4 percent of checks electronically. In addition, at the end of 2005 virtually all returned checks handled by the Reserve Banks were sent to and from the Reserve Banks in paper form. By December 2010, the Reserve Banks received 97.1 percent of returned checks

[1] Expedited Funds Availability Act, 12 U.S.C. 4001 *et seq.;* Check Clearing for the 21st Century Act, 12 U.S.C. 5001 *et seq.*

[2] 12 U.S.C. 4008 (b) and (c).

[3] Section 609(b)(4) states that "[i]n order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that * * * the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks." 12 U.S.C. 4008(b)(4).

[4] Section 609(c)(1) states that "[i]n order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks." 12 U.S.C. 4008(c)(1).

[5] Certain provisions, such as the same-day settlement provisions in § 229.36(f), were adopted at later times.

[6] Public Law 108–100, 117 Stat. 1177 (codified at 12 U.S.C. 5001–5018) (2003).

[7] Prior to the Check 21 Act, the Reserve Banks presented about 20 to 25 percent of their check volume electronically, primarily under MICR-presentment programs.

electronically, and delivered about 76.7 percent of returned checks to depositary banks electronically.[8] Based on information from banking industry sources, the Board believes that these trends with respect to checks handled by the Reserve Banks are representative of trends nationwide.[9]

Overview of the Proposal

I. Amendments To Encourage Electronic Check Clearing and Check Return

As a general matter, the Board believes that electronic check-clearing and check-return methods improve the efficiency of the check system. Electronic methods are faster and more resilient, and, at the same time, they are less costly and less error prone. Despite the increasing number of checks presented and returned electronically, some banks continue to demand paper returned checks or present paper checks for same-day settlement under § 229.36(f) of Regulation CC. The full benefits and cost savings of the electronic methods, however, cannot be realized so long as some banks continue to employ paper-processing methods. Accordingly, under its authority provided in § 609(c) of the EFA Act, the Board is proposing amendments to subpart C of Regulation CC to provide incentives for depositary banks to receive, and paying banks to send, returned checks electronically. The Board also is proposing amendments to the same-day settlement provisions to promote electronic presentment of checks. Further, based on experience since the Check 21 Act became effective, the Board is proposing minor amendments to subpart D of Regulation CC with respect to substitute checks.

A. Expeditious-Return Rule

1. Current Rule

Regulation CC currently provides that if a paying bank determines not to pay a check, it must return the check in an expeditious manner, as provided under either the "two-day/four-day test" (§ 229.30(a)(1)), or the "forward-collection test" ((§ 229.30(a)(2)).[10] To meet the two-day/four-day test, a paying bank must send a returned local check in a manner such that the check would normally be received by the depositary bank not later than 4 p.m. local time of the depositary bank on the second business day following the banking day on which the check was presented to the paying bank. For nonlocal checks, a paying bank must send a returned check in a manner such that the check would normally be received by the depositary bank not later than 4 p.m. local time of the depositary bank on the fourth business day following the banking day on which the check was presented to the paying bank. Because there now is only one Federal Reserve Bank check-processing region, there are no longer any nonlocal checks, and the four-day test applies to a null set of checks.[11]

The forward-collection test is satisfied if a paying bank sends the returned check in a manner that a similarly situated bank would send a check (i) of similar amount as the returned check, (ii) drawn on the depositary bank, and (iii) deposited for forward collection in the similarly situated bank by noon on the banking day following the banking day on which the check was presented to the paying bank.[12]

When these tests were adopted in the late 1980s, the expeditious-return standard presumed that banks could use the same modes of transportation for returned checks that they used for forward-collection checks. Delivering returned checks in the same time and manner as forward checks would satisfy the regulation's expeditious-return requirements. Today, by contrast, forward-check collection is almost entirely electronic, and the dedicated air and ground transportation for paper checks has largely been discontinued. Some depositary banks, however, continue to require that returned checks be delivered to them in paper form, making it difficult for paying banks and returning banks to meet the expeditious-return requirement. Accordingly, the full benefits and cost savings of electronic check-return methods cannot be realized if paying banks and returning banks must incur substantial expense to deliver returned checks to the banks that continue to require that paper checks be returned. Moreover, as technology has improved, the Board understands that the initial implementation and ongoing costs incurred by a depositary bank to receive returned items electronically have decreased substantially. For example, the Reserve Banks now provide electronic copies of returned checks in .pdf files to small depositary banks, which can use the .pdf file to print substitute checks on their own premises if necessary. Compared to alternative means of receiving electronic returns, this approach involves only minimal upfront costs to a depositary bank, such as the purchase of a printer capable of double-sided printing and magnetic-ink toner cartridges.[13] After printing the electronic copies, the depositary bank can process them in the same way it processes paper checks that are physically delivered to it.

2. Proposed Expeditious Return Requirement

The Board believes that a fully-electronic check-return system benefits the nation's payment system, as well as consumers and businesses. Additionally, the Board believes that electronic check return substantially reduces risks to the check system and that the costs to a bank to receive returned checks electronically have markedly declined. Therefore, the Board believes that it is appropriate for the risk of non-expeditious return to rest with a depositary bank that chooses not to accept electronic returns. Accordingly, to encourage depositary banks to agree to receive returned checks electronically, and to avoid imposing increased cost on paying banks to return checks expeditiously to depositary banks that do not accept electronic returns, the Board proposes to amend Regulation CC to provide that a depositary bank would not be entitled to expeditious return unless it agrees to receive electronic returns directly or indirectly from the paying bank returning the check.[14] The Board proposes to define a new term,

[8] The proportion of returned checks the Reserve Banks delivered electronically to the depositary bank increased from 28 percent in June 2009 to 76.7 percent in December 2010. The proportion of depositary banks to which the Reserve Banks deliver returns electronically, while lower, has also increased, from 8 percent in June 2009 to 52 percent in December 2010.

[9] The Electronic Check Clearing House Organization (ECCHO) collects data from various check-clearing intermediaries, including the Reserve Banks, to estimate the percent of interbank checks that are presented electronically. See *http://www.eccho.org/check_ps.php.*

[10] Section 229.31(a) sets forth similar tests for returning banks.

[11] A local check is a check drawn on a paying bank located in the same check-processing region as the depositary bank. 12 CFR 229.2(r). A nonlocal check is a check drawn on a paying bank located in a different check-processing region as the depositary bank. 12 CFR 229.2(v).

[12] The forward-collection test is satisfied if the paying bank "returns a check by means as swift as the means similarly situated banks would use for the forward collection of a check drawn on the depositary bank." *See* commentary to § 229.30(a)(2).

[13] Prior to developing the capability of providing the electronic .pdf copies, it may have been necessary for a depositary bank, or its processor, to develop systems capable of automated processing of incoming electronic data files (*e.g.,* X9.100–187 files) representing returned checks and to integrate these systems with the bank's other existing systems, such as the bank's demand-deposit-account systems that maintain the bank's customer balances.

[14] The paying bank initiating the return would still be subject to the midnight deadline for all returned checks. *See* Uniform Commercial Code (UCC) § 4–302.

"electronic return," and to establish requirements for an item to qualify as an electronic return.[15] Under the proposal, an electronic return would be treated as if it were a check for purposes of subpart C of the regulation (*See* § 229.33 in the section-by-section analysis).[16]

Sections 229.30(a) and 229.31(a), respectively, would continue to set forth the general expeditious return rule for paying banks and returning banks. Proposed §§ 229.30(b) and 229.31(b) would set forth the exceptions to the expeditious return requirements, one of which would be a new exception: There is no expeditious return requirement if the depositary bank has not agreed to accept the returned check electronically as described in proposed § 229.32(a). Under proposed § 229.32(a), a depositary bank may agree to receive an "electronic return" from the paying bank so as to be entitled to expeditious return: (1) Directly from the paying bank; (2) directly from a returning bank that holds itself out as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to return checks expeditiously under § 229.31(a); or (3) as otherwise agreed with the paying bank, such as through a network provided by a clearing house or other third party.

The Board proposes to delete the forward-collection test for expeditious return from §§ 229.30(a) and 229.31(a). This test was originally included because paying banks and returning banks were in some cases (such as that of a remote depositary bank) not able to meet the two-day/four-day test, and the forward-collection test provided that in these cases paying banks and returning banks nonetheless satisfied the expeditious return requirement so long as the returned check was delivered to the depositary bank in the same time and manner that a forward-collection check would be delivered to the bank (in its role as paying bank). Given that under the Board's proposal, however, a paying bank or returning bank must satisfy the expeditious return requirement only if the depositary bank agrees to receive electronic returns, a paying bank or returning bank should always be able to satisfy the two-day test with respect to a depositary bank to which the test applies. Specifically, geographic remoteness of a depositary bank from the paying bank should not preclude an electronic return from reaching the depositary bank within two business days of a check's presentment to the paying bank. Accordingly, the Board believes that the forward-collection test is not necessary in light of the Board's proposal.

Additionally, because there are no longer nonlocal checks (*see* the discussion below in section III), the four-day test for expeditious return of a nonlocal check no longer applies to any checks, and the Board proposes to eliminate that test as well. Under the Board's proposed rule, the two-day test for expeditious return will be the only test in §§ 229.30(a) and 229.31(a). Therefore, a paying bank or returning bank would have to send the returned check expeditiously such that the depositary bank would normally receive the check no later than 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank.

3. Alternate Approaches Considered

The Board requests comment on alternate approaches to revising the expeditious return rule to encourage electronic returns. One possible alternate approach would require a bank that holds itself out as a returning bank to accept an electronic return from any other bank that similarly holds itself out as a returning bank. This approach would ensure that even if the paying bank and depositary bank had electronic return agreements with different returning banks, the electronic return could reach the depositary bank. This approach, however, may be costly for returning banks to implement, because they would have to establish electronic return connections and agreements with every other returning bank. A second alternative would require an electronic return to be returned through the forward-collection chain (essentially reverting to the pre-Regulation CC rule). Some depositary banks, however, have arrangements under which returned checks are delivered to a different location than that from which the depositary bank sends its checks for forward collection.[17] The second alternative might impose barriers to these arrangements. Both of these alternatives therefore appeared to be more operationally complex and costly than the proposed approach. Nonetheless, the Board requests comment on the desirability of these and other alternatives to the Board's proposal.

B. Notice of Nonpayment Requirement

Under current § 229.33(a), if a paying bank determines not to pay a check in the amount of $2,500 or more, it must provide notice of nonpayment such that the notice is received by the depositary bank by 4 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. Return of the check itself satisfies the notice of nonpayment requirement if the return meets the timeframe requirement for a notice of nonpayment. The current two-day timeframe for notice of nonpayment is the same as the two-day timeframe for expeditious return set forth in proposed §§ 229.30(a) and 229.31(a). Accordingly, because a depositary bank should receive the returned check within the current notice-of-nonpayment timeframe, the Board proposes to delete the notice of nonpayment provision as unnecessary.

Under the Board's proposal, a depositary bank that does not agree to receive electronic returns from the paying bank, as specified in § 229.32(a), will not receive expeditious return or a notice of nonpayment. The Board, however, believes that the proposed changes give depositary banks a strong incentive to make arrangements to receive returns electronically. The Board requests comment on whether the notice-of-nonpayment requirement should be retained for banks that do not agree to accept electronic returns in a nearly all-electronic environment.

C. Same-Day Settlement Rule

Section 229.36(f) requires a paying bank to provide same-day settlement for checks presented in accordance with reasonable delivery requirements established by the paying bank and presented at a location designated by the paying bank and by 8 a.m. (local time of the paying bank) on a business day. Prior to the Regulation CC same-day settlement rule, which became effective in 1994, private-sector collecting banks sometimes (1) did not obtain settlement from the paying bank until the day after presentment or (2) were charged "presentment fees" by the paying bank, which the paying bank would deduct from the amount it paid in settlement of the checks presented to it.[18] By contrast, under §§ 13(1) and 16(13) of the Federal Reserve Act and § 210.9(b)(1) of Regulation J (12 CFR

[15] *See* proposed § 229.2(v) (definition of "electronic return") in the section-by-section analysis.

[16] *See* proposed § 229.34 in the section-by-section analysis for warranties made with respect to electronic returns.

[17] For example, a depositary bank may collect checks through a correspondent bank or processor, but have returned checks delivered directly to the depositary bank itself. Conversely, a depositary bank may arrange with another bank to apply the other bank's indorsement as the depositary-bank indorsement, such that depositary bank's returned checks are handled by the other bank. *See* § 229.35(d).

[18] 57 FR 46956 (Oct. 14, 1992).

part 210), the Reserve Banks obtain same-day settlement at par for checks presented to a paying bank before its cut-off hour, which is generally 2:00 p.m. or later.[19] To reduce the competitive disparity between the Reserve Banks and other collecting banks, and to more equitably balance the bargaining power between collecting and paying banks, the same-day settlement rule (1) required a paying bank to provide same-day settlement to a private-sector collecting bank, provided that presentment was made by 8 a.m. in accordance with reasonable delivery requirements established by the paying bank and (2) prohibited the paying bank from deducting fees from the amount of its settlement for checks presented in accordance with the terms of the rule.[20]

As noted above, the Check 21 Act facilitated substantial changes in the manner in which checks are collected in the United States. In December 2010, the Reserve Banks received about 99.7 percent of check-collection volume electronically, and presented about 98.4 percent of their volume electronically. Many paying banks that receive check presentments electronically have indicated that they prefer to receive all of their interbank check presentments electronically, so that they can streamline their back-office operations and eliminate the costs associated with processing paper-check presentments. Some collecting banks, however, continue to present paper checks to these paying banks under the Regulation CC same-day settlement rule.

To encourage the banking industry's ongoing transition to fully-electronic interbank check clearing, the Board proposes to allow a paying bank to require checks presented for same-day settlement to be presented electronically as "electronic collection items." A paying bank, however, must have agreed to receive electronic collection items from the presenting bank under proposed § 229.36(a). Similar to electronic returns, the Board proposes to define a new term, "electronic collection item," and to establish substantive requirements for an item to qualify as an electronic collection item. Under the proposal, the timeframes, deadlines, and settlement methods for same-day settlement presentments of electronic collection items would be the same as those currently in effect for same-day settlement presentments of paper checks. The proposed definition of an electronic collection item and the ways by which a paying bank agrees to accept electronic presentment items from a presenting bank are discussed more below in the section-by-section analysis of proposed §§ 229.2(s) and 229.36(a), respectively.

The proposed rule would not preclude interbank presentment of checks in paper form; settlement for such presentments would be subject to the UCC, § 229.36(d) if the paying bank has not specified that checks presented for same-day settlement be presented as electronic collection items, or Regulation J.[21] The Board requests comment on the proposed modification to the same-day settlement rule.

II. Electronic Items Not Derived From Checks

The Board is aware of industry practices in which an electronic image of a "check" is created, but a check never existed in paper ("electronically-created items"). For example, payees collect payment by means of electronically-created items (*i.e.,* items that never existed in paper form) that resemble images of remotely created checks. Similarly, the drawer's bank (the paying bank) might supply a smart-phone application through which the drawer is able to execute a "handwritten" signature on the phone's screen, and through which the signature is attached to an electronic "check" that the drawer sends via the Internet to the payee, for the payee's subsequent electronic deposit with its bank.

An electronically-created item is not derived from an original paper check, and therefore it cannot be used to create a substitute check that meets the requirements of the Check 21 Act and Regulation CC.[22] As a practical matter, a bank (including perhaps the depositary bank) receiving an electronically-created item cannot distinguish the item from any other image of a check that it receives electronically. The bank, nonetheless, may transfer the image as if it were an electronic collection item or electronic return, or produce a paper item that is indistinguishable from a substitute check (although not a valid substitute check because the item never existed in paper). A bank that transfers an image as if it were an electronic collection item or electronic return may be liable under the proposed new warranties (*see* proposed § 229.34) related to electronic collection items and electronic returns, or may be liable for breach of the Check 21 Act's warranty that a substitute check accurately represents all of the information from the original check as of the time the original check was truncated. In order to protect a bank that receives an electronically-created item from another bank from potential liability, the Board proposes that any bank transferring an electronically-created image and related information as either an electronic collection item or an electronic return would make any warranty the bank would make if the electronically-created item were in fact an electronic collection item or an electronic return (in other words, as if the item were derived from a paper check). As discussed in the section-by-section analysis of proposed § 229.34, the proposal would apply the same warranties to electronic collection items and electronic returns that would apply had those items been handled as paper checks (including remotely created checks) or substitute checks.

As a result of these proposed new warranties, a bank receiving a warranty claim related to an electronic collection item, electronic return, or a nonconforming substitute check could pass back its liability for the item to the bank from which it had received the electronically-created image and information. Although in some instances the first bank to make the warranty also may not know whether an image and information came from a paper instrument, the Board believes that that bank is in the best position to

[19] Times are stated as local time of the paying bank.

[20] In April 1988 the Board requested comment on a proposal requiring paying banks to settle on the day of presentment for checks presented by any bank prior to 2 p.m., *i.e.,* the same timeframe as is applicable to the Reserve Banks. (53 FR 11911 (Apr. 11, 1988)) The overwhelming majority of commenters, however, objected to the proposed 2 p.m. deadline because they believed that it would severely disrupt corporate cash management and controlled disbursement services, as well as paying banks' operations. *See* 57 FR 46956, 46957 (Oct. 14, 1992).

Further, in March 1998, the Board requested comment on the effect of the same-day settlement rule, and on whether remaining legal discrepancies between the Reserve Banks and private-sector collecting banks, such as the 8 a.m. versus 2 p.m. presentment time for same-day settlement, should be further reduced (63 FR 12700, Mar. 16, 1998). Most commenters did not believe that the six-hour difference in presentment deadlines or other remaining legal disparities were a significant impediment to the ability of private-sector collecting banks to compete with the Reserve Banks. *See* 63 FR 68701, 68703 (Dec. 14, 1998). The Board concluded that the costs associated with reducing the remaining legal disparities would outweigh any payments system efficiency gains, and therefore decided not to propose any specific regulatory changes.

[21] *See* UCC 4–213 and 4–301.

[22] Under the terms of the Check 21 Act, a substitute check is a paper reproduction of an original check that contains an image of the front and back of the original check. Regulation CC defines *original check* as "the first paper check issued with respect to a particular payment transaction." In the case of an electronically created item, there is no original check of which a substitute check can be a reproduction.

know and to protect itself contractually against the risk that it did not.

As noted above, a bank often cannot distinguish between electronic items derived from paper checks and electronically-created items. Therefore, under the proposal, banks might treat electronically-created items as if they were electronic collection items or electronic returns. The Board requests comment on whether, in addition to the proposed warranties discussed above, it should in the future consider making an electronically-created item subject to subpart C of Regulation CC as if it were a check. Such a change would result, for example, in the paying bank to which the item is presented being subject to the regulation's expeditious-return requirement. The Board emphasizes that the proposed warranties, as well as making electronically-created items subject to subpart C as if they were checks, would not necessarily affect any future determinations by the Board or the Bureau of Consumer Financial Protection as to whether such electronically-created items are electronic fund transfers subject to Regulation E (12 CFR part 205).

The Board proposes that the existing warranties related to remotely created checks be extended to electronically-created items that resemble images of remotely created checks. As a general matter, the Board is not aware of reliable data regarding the prevalence of remotely created checks and similar electronically-created items.[23] The Board requests comment on the frequency of use of these types of checks and items, the rate at which they are returned unpaid, and the extent to which payees have valid reasons to obtain payment by means of these items, as opposed to using an ACH debit transaction or other means.

III. Amendments Related to the Elimination of Nonlocal Checks

In response to the continued nationwide decline in check usage and banks' rapidly increasing use of electronic check-clearing methods since the Check 21 Act, as well as to meet the cost recovery requirements of the Monetary Control Act of 1980, the Federal Reserve Banks have ceased check-processing operations at all of their check-processing offices except one.[24]

The EFA Act's and Regulation CC's funds-availability schedule differentiates between "local checks" and "nonlocal checks," which are defined in terms of which "check-processing region" the paying bank is located in relative to the depositary bank.[25] The EFA Act and Regulation CC define a "check-processing region" in terms of the geographical area served by a Federal Reserve Bank check-processing center.[26] The Reserve Banks' office closures have had the effect of reducing to one the number of check-processing regions. Accordingly, there are no more "nonlocal checks," because all paying banks and depositary banks are located in the same check-processing region.[27]

Because there are no more nonlocal checks, certain provisions in the regulation can be substantially simplified. Specifically, the Board proposes to delete the definitions in subpart A that relate to distinguishing local from nonlocal checks (specifically, the definitions of "check-processing region," "local check," "local paying bank," "nonlocal check," and "nonlocal paying bank"), as well as the related portions of appendix A to the regulation. The Board also proposes to streamline the funds-availability and disclosure provisions in subpart B and to update the model funds-availability forms set forth in appendix C to the regulation.[28] The Board proposes that a bank basing its disclosures on the models currently in the appendix would continue to receive a safe harbor for doing so up to 12 months after a final rule becomes effective, provided that the disclosures accurately reflect the bank's policies and practices. Finally, the Board proposes to update the preemption determinations, with respect to states' funds-availability laws, that are set forth in appendix F to the regulation.[29]

IV. Dodd-Frank Act Amendments

A. EFA Act Dollar Amounts

Section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amends the EFA Act by increasing from $100 to $200 the amount of deposited funds that banks must make available for withdrawal by opening of business on the next day.[30] The effective date of this provision of the act is the "designated transfer date," which the Secretary of the Treasury has determined to be July 21, 2011.[31] This provision of the EFA Act is implemented in § 229.10(c)(1)(vii). Additionally, the model disclosure forms set forth in current appendix C reflect the requirement that a bank must make $100 of the deposit available on the next business day. When the Dodd-Frank Act's increase to $200 becomes effective, banks should ensure that their disclosures reflect the new funds-availability schedule and that customers are notified of the changes in policy in accordance with § 229.18(e). Specifically, effective July 21, 2011, a bank basing its funds-availability disclosure on current model C–3, C–4, or C–5 must ensure that its disclosure indicates that the first $200 (rather than $100) of a check deposit will be

[23] Banks cannot readily differentiate remotely created checks and electronically-created items that resemble remotely created checks from regular checks, which makes data regarding these items difficult to obtain.

In March 2008, the Reserve Banks published an estimate, based on visual inspection of a sample of about 35,000 checks, that about one percent of all checks in 2007 were remotely created. *See* page 33 of the Reserve Banks' 2007 *Check Sample Study: http://www.frbservices.org/files/communications/pdf/research/2007_check_sample_study.pdf.* The study's definition of the item in question was somewhat different than Regulation CC's definition of a remotely created check.

[24] In 2003, the Reserve Banks had 45 check-processing offices. Cleveland became the sole remaining Reserve Bank check-processing office on February 27, 2010. Historically, appendix A to Regulation CC identified each Federal Reserve Bank check-processing office and listed under each office the first four digits of the routing numbers of the depository institutions served by that office. Appendix A thereby helped depositary banks determine whether a deposited check's paying bank was local or nonlocal. In conjunction with the Reserve Banks' cessation of check-processing activities at each office, the Board published conforming amendments to appendix A so that the appendix accurately reflected which institutions were served by each remaining office. With Cleveland now the sole office, all paying banks' routing symbols are listed under it.

[25] 12 CFR 229.2(r) and 229.2(v). A "local check" is one that is payable by a bank located in the same check-processing region as the depositary bank. By contrast, a "nonlocal check" is one that is payable by a bank located in a different check-processing region than the depositary bank.

[26] Section 602(9) of EFA Act defines check processing region as "the geographical area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations." Section 229.2(m) defines check processing region as "the geographical area served by an office of a Federal Reserve Bank for purposes of its check-processing activities."

[27] A deposit of a "local check" receives two-day funds availability under the regulation, whereas nonlocal checks received five-day availability. The elimination of nonlocal checks therefore has improved funds availability for banks' customers.

[28] The proposed updates to the model forms in appendix C are based on consumer testing of the forms, and are discussed in more detail in the section-by-section analysis below. A detailed report regarding the consumer testing is available on the Board's public Web site, *http://www.federalreserve.gov,* along with this proposed rule.

[29] *See* Regulation CC § 229.20 and EFA Act § 608. A state's funds-availability law must have been in effect on or before September 1, 1989, to not be preempted by the regulation.

[30] *See* § 1086(e) of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010).

[31] *See* § 1062 of the Dodd-Frank Act. The designated transfer date is subject to an extension to up to 18 months after the Dodd-Frank Act's date of enactment.

available on the next business day after the day of deposit.[32]

Section 1086 amends the EFA Act to require the Board, jointly with the Bureau of Consumer Financial Protection (Bureau), to update the dollar amounts to reflect inflation every five years after December 31, 2011.[33] These amounts include the amount of funds a depositary bank must make available from a deposit of a check not subject to next-day availability (§ 229.10(c)(1)(vii)), by cash or similar means (§ 229.12(b)), and under the new-account and large-deposit exceptions (§§ 229.13(a) and (b)). These amounts also include the EFA Act's damage limitations (§ 229.21(a)). To facilitate future amendments to the regulation in this regard, the proposed amendments minimize the number of references to specific dollar amounts. For example, in the future, the $100 (which increases to $200 as of the transfer date) mentioned above would be considered "the minimum amount of a deposit that must be made available on the next day." The Board plans to seek comment on proposed methods of indexing the amounts to inflation jointly with the Bureau at a later date.

B. Rule-Writing Authority

Section 1086 also amends the Board's rule-writing authority under the EFA Act by making certain rule-writing authorities joint with the Bureau. Specifically, as of the transfer date, the Board's authority to implement the EFA Act's provisions (EFA Act § 609(a)), reduce hold periods (EFA Act § 603(d)(1)), establish exceptions to the funds-availability schedule (EFA Act § 604(f)), and publish model disclosure provisions (EFA Act § 605(f)(1)) will become joint with the Bureau. Accordingly, after the transfer date, any rules promulgated pursuant to these authorities will be done so jointly with the Bureau.

C. Administrative Enforcement

The Dodd-Frank Act eliminates the Office of Thrift Supervision as of July 21, 2011, the "transfer date" provided in § 311 of the Dodd-Frank Act, and transfers enforcement authority for insured savings associations under § 8 of the Federal Deposit Insurance Act to the Office of the Comptroller of the Currency.[34] Accordingly, as of the transfer date, compliance with part 229 will be enforced by the Office of the Comptroller of the Currency in the case of savings associations with deposits insured by the Federal Deposit Insurance Corporation. The administrative enforcement provisions are contained in § 229.3.

V. Other Proposed Amendments

The Board proposes other amendments to the provisions of Regulation CC and its commentary. These proposed changes are discussed in the section-by-section analysis below.

Section-by-Section Analysis

Paragraph citations in this section-by-section analysis are as proposed to be renumbered, unless otherwise explicitly stated. Sections not discussed below are either unchanged or have only technical or conforming amendments. The Board requests comment on all aspects of the proposed rule.

I. Subpart A

A. Section 229.1—Authority and Purpose, Organization

The Board proposes to add to § 229.1(b) descriptions of the appendices to the regulation, as well as amendments to conform § 229.1(b) to amendments proposed in this notice.

B. Section 229.2—Definitions

The definitions of terms in § 229.2 were incorporated into the regulation at different times and are not currently in alphabetical order. The Board proposes that the paragraphs in this section be renumbered so that defined terms are in alphabetical order. Similarly, the Board proposes to renumber the paragraphs in the commentary to reflect the proposed renumbering.

1. Section 229.2(b)—Automated Clearinghouse (ACH) Credit Transfer

Because the regulation uses the term ACH only within other definitions, the Board proposes to delete the definition of the term "automated clearinghouse" and replace it with a new defined term, "automated clearinghouse (ACH) credit transfer." This phrase is used in the definition of electronic payment (§ 229.2(t)) and in the commentary to § 229.10(b), which requires a bank to make funds received for deposit by an electronic payment available for withdrawal the next day. The Board intends no change to the regulation's substance by this proposed clarifying definitional change.

2. Section 229.2(c)—Automated Teller Machine or ATM

The Board proposes to clarify that an automated teller machine (ATM) includes only those devices at which a person may make deposits by cash or paper check. For example, a remote deposit capture device would not be considered an ATM because a bank's customer would be depositing an image of the check, not the paper check, into the account. The Board proposes conforming amendments to the commentary of this section. Additionally, the Board proposes to provide an example of the "other account transactions" that may be performed at an automated teller machine (ATM); specifically, making cash withdrawals from an account.

3. Section 229.2(r)—Depositary Bank

The Board proposes to clarify that a bank that rejects a check submitted for deposit is not a depositary bank. The rationale for this proposed change is discussed in more detail below in this section-by-section analysis under § 229.52.

4. Section 229.2(s)—Electronic Collection Item

The Board proposes in new § 229.2(s) to define the new term "electronic collection item" as an electronic image of and information related to a check that a bank sends for forward collection and that a paying bank has agreed to receive under § 229.36(a), and that is sufficient to create a substitute check.[35] Under the proposed definition, the image and information must conform to American National Standard Specifications for Electronic Exchange of Check and Image Data—X9.100–187, in conjunction with its Universal Companion Document, (hereinafter collectively referred to as ANS X9.100–187), unless the parties otherwise agree.[36] If an electronic collection item satisfies the requirements set forth in proposed § 229.2(s), then, as stated in proposed § 229.33, the provisions of subpart C would apply to the electronic collection item as if it were a check. (*See* proposed commentary to

[32] Per § 229.18(e), a bank must provide a change-in-terms notice to existing consumer customers by August 21, 2011.

[33] The amounts are indexed to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics (BLS), rounded to the nearest multiple of $25. See § 1086(f) of the Dodd-Frank Act.

[34] The transfer date is subject to an extension of up to 18 months after the Dodd-Frank Act's date of enactment. *See* § 311 of the Dodd-Frank Act.

[35] The agreement to receive an electronic collection item could be in the form of a Federal Reserve Bank operating circular or a clearinghouse rule.

[36] X9.100–187 is available from *http://www.x9.org.* The UCD for X9.100–187 is available at *http://www.checkimagecentral.org/pdf/UCD_X9_100-187-2008_Version_1.2.pdf.*

§ 229.2(s)).[37] Some electronic presentment agreements, however, may not require an image of the check. Electronic items presented under these agreements would not be electronic collection items because they are not sufficient to create a substitute check, nor would they be treated as checks for purposes of subpart C. The proposed commentary also explains that an electronic collection item that contains an image of the front and back of a substitute check (as opposed to an original check) would be an electronic representation of a substitute check, as that phrase is defined in proposed § 229.2(hh) (current § 229.2(xx)). Not all electronic representations of substitute checks, however, would qualify as an electronic collection item, because, to be an electronic collection item, an electronic representation of a substitute check must contain sufficient information to create a substitute check.

The Board believes that ANS X9.100–187 is the most prevalent industry standard for electronic images and information that will enable the receiving bank to create a substitute check. The Board recognizes, however, that certain banks may use a different standard and that, as is the case with many technology standards, the standard likely will evolve. To the extent that banks use a different standard, the proposed definition of electronic collection item would permit parties to agree to a standard other than ANS X9.100–187 and still have the item qualify as an electronic collection item that is treated as a check for purposes of subpart C, provided that the item is sufficient to create a substitute check. The Board requests comment on the proposed standard for an electronic collection item and whether any other standard should be specified in the regulation.

5. Section 229.2(u)—Electronic Presentment Point

The Board proposes in new § 229.2(u) to define electronic presentment point as the electronic location that the paying bank has designated for receiving electronic collection items. This point may be either an e-mail address or other electronic address. The Board requests comment on whether this definition provides enough specificity.

6. Section 229.2(v)—Electronic Return

The Board proposes in new § 229.2(v) to define the new term "electronic return" as an electronic image of and information related to a check that a paying bank has determined not to pay and that a depositary bank has agreed to receive under § 229.32(a), and that is sufficient to create a substitute check. The image and information must conform to ANS X9.100–187, unless the parties otherwise agree. The proposed commentary explains that if an electronic return satisfies the requirements set forth in § 229.2(v), then the provisions of subpart C apply to the electronic return as if it were a check (*See* proposed § 229.33).[38]

The proposed commentary to § 229.2(v) explains that a depositary bank's agreement with a returning bank to accept .pdf files that are sufficient to create substitute checks would be one example of banks varying by agreement the regulation's requirement that an electronic return conform with ANS X9.100–187. By agreeing with a returning bank to accept an electronic return in the form of a .pdf file, a depositary bank would thereby be entitled to expeditious return. The Board requests comment on the proposed standard for an electronic return and whether any other standard should be specified in the regulation.

7. Section 229.2(w)—Electronic Return Point

The Board proposes in new § 229.2(w) to define electronic return point as the electronic location that the depositary bank has designated for receiving electronic returns. The proposed commentary notes that an electronic return point may be an e-mail address or other electronic address that a depositary bank has designated as the place to which electronic returns must be delivered. The Board requests comment on whether this definition provides enough specificity.

8. Section 229.2(hh)—Paper or Electronic Representation of a Substitute Check

The Board proposes to modify the commentary to the definition of this term to note that an electronic representation of a substitute check may also be an electronic collection item or electronic return if the electronic representation contains sufficient information for creating a substitute check and conforms to ANS X9.100–187, or another format to which the parties agreed.

9. Section 229.2(pp)—Routing Number

The Board proposes to add to the definition a new subparagraph providing that the term also includes the bank-identification number contained in the electronic image of or information related to a check. Further, the Board also proposes to move the two introductory paragraphs in appendix A, which provide general information about routing numbers, to the commentary to the definition of routing number.

10. Deleted Terms

Check-processing region, local check, local paying bank, nonlocal check, and nonlocal paying bank. Because there is now only one nationwide check-processing region, there are no longer any nonlocal checks, and the definitions in the regulation implementing the distinctions between local and nonlocal checks are no longer necessary. Accordingly, the Board proposes to delete from the regulation the definitions of "check-processing region (current § 229.2(m)), "local check" (current § 229.2(r)), "local paying bank" (current § 229.2(s)), and "nonlocal paying bank" (current § 229.2(w)), and the commentary thereto.

Similarly situated bank. The only place the current regulation uses this term is in the forward-collection test for expeditious return. Because the Board proposes to delete that test from the regulation (as discussed below in this section-by-section analysis under §§ 229.30(a) and 229.31(a)), the regulation's definition of similarly situated bank is no longer necessary and the Board proposes to delete current § 229.2(ee).

II. Subpart B

Throughout subpart B and the commentary thereto, the Board proposes to eliminate all references to "check-processing regions," "local checks," "local paying banks," "nonlocal checks," and "nonlocal paying banks."

A. Section 229.10(c)—Next-Day Availability of Certain Check Deposits

1. Section 229.10(c)(1)(vi)

Given that there is only one nationwide check-processing region, the Board proposes in § 229.10(c)(1)(vi) to delete the phrase "if both branches are located in the same state or check-processing region." As a result, the subparagraph would require a depositary bank to provide next-day availability for a check deposited in a

[37] For example, a paying bank receiving presentment of an electronic collection item would be subject to the regulation's expeditious-return requirement, provided the depositary bank has agreed to accept electronic returns from the paying bank under § 229.32(a).

[38] Like an electronic collection item, an electronic return may be an electronic representation of a substitute check, but not all electronic representations of substitute checks would qualify as an electronic return.

branch of the depositary bank and drawn on the same or another branch of the same bank.

2. Section 229.10(c)(1)(vii)

Section 1086(e) of the Dodd-Frank Act increases from $100 to $200 the minimum amount of funds deposited by check or checks on a given business day that a bank must make available by opening of business on the next business day pursuant to § 603(a)(2)(D) of the EFA Act. That provision of the EFA Act is implemented in § 229.10(c)(1)(vii) of Regulation CC, and the increase is expected to take effect on July 21, 2011, regardless of whether the Board and the Bureau have amended Regulation CC. Accordingly, the Board proposes to amend the commentary to § 229.10(c)(1)(vii) to facilitate future amendments to the minimum amount of a deposited check a bank must make available on the business day following the banking day of deposit. Specifically, the Board proposes to replace references to "$100" with references to "the minimum amount." The Board proposes to make this amendment throughout the commentary, as well as in the model forms.

3. Section 229.10(c)(2)

The Board proposes to delete current § 229.10(c)(2), which states that a depositary bank shall make funds available by the second business day after the banking day on which a check is deposited in the case of a check deposit that meets the requirements of §§ 229.10(c)(1)(ii), (iii), (iv), or (v), except the check is not deposited in person.[39] In the absence of nonlocal checks, the checks described § 229.10(c)(2) are subject to the same rule as the general rule set forth in proposed § 229.12. Section 229.10(c)(2) is therefore no longer necessary.

B. Section 229.12—Availability Schedule

1. Proposed § 229.12(a)—In General

The Board proposes to delete current § 229.12(a). It specifies the effective date (September 1, 1990) for § 229.12 and is no longer necessary.

The Board proposes that new § 229.12(a) set forth the general funds-availability rule for deposits of checks: Unless subject to one of the enumerated exceptions, funds from a check deposit must be made available for withdrawal by the second business day following the banking day of deposit. Proposed new § 229.12(a) is derived from current § 229.12(b), which sets forth local check availability. In the absence of a distinction between local checks and nonlocal checks, current § 229.12(b)(1), (2), (3), and (4) are subsumed within this general rule, and the Board proposes to delete them.[40] Similarly, current § 229.12(c) applies to nonlocal checks, which is now a null set, and the Board proposes to delete § 229.12(c) and commentary thereto.

2. Section 229.12(b)—Withdrawal by Cash or Similar Means

Section 229.12(b) implements the EFA Act's permissive adjustment to the funds-availability rules for withdrawals by cash or similar means. In part, a bank may delay availability for withdrawal by cash or similar means by one business day, provided that the bank makes $400 of the deposited funds available for withdrawal not later than 5 p.m. on the business days on which the funds must be made available under the funds-available schedule. Like other amounts specified in the EFA Act, this $400 will be adjusted every five years for inflation. In order to facilitate future adjustments to the amount, the Board proposes to amend the commentary to § 229.12(b) by replacing references to "$400" with references to "the cash withdrawal amount." The Board proposes to make similar amendments throughout the commentary and model forms.

3. Section 229.12(d)—Deposits at Nonproprietary ATMs

As indicated in the EFA Act's legislative history, Congress adopted the five-day maximum hold on nonproprietary ATM deposits to match the five-day maximum hold on a nonlocal check deposit, because the depositary bank did not know the composition of a nonproprietary ATM deposit (that is, whether the deposit consisted of cash, local checks, nonlocal checks, etc.).[41] In the absence of nonlocal checks, however, there is no longer any class of check that is subject to a maximum five-day hold.

EFA Act § 603(d)(1) states that "The Board shall, by regulation, reduce the time periods established under subsections (b), (c), and (e) to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks." The statute's legislative history recommends a quantitative benchmark for the Board to use to determine whether to reduce these hold periods: a receiving bank could reasonably expect to learn of the return of two-thirds of the checks in a given category before a bank must make the deposited funds available for withdrawal at the opening of business.[42]

As mentioned above, in December 2010 the Reserve Banks received about 99.7 percent of deposited for forward collection electronically, presented 98.4 percent of their checks electronically, received 97.1 percent of returned checks electronically, and delivered about 76.7 percent of returned checks to depositary banks electronically. Thus, about 73.0 percent of checks cleared and returned through the Reserve Banks complete the roundtrip from the depositary bank to the paying bank and back again in electronic form. It is reasonable to expect that a check cleared and returned entirely in electronic form would complete this roundtrip in three business days. For example, if a check is deposited on Monday and collected electronically, the check would generally be presented to the paying bank on Tuesday. The paying bank would generally send the return electronically to a returning bank on the night between Wednesday and Thursday, which would electronically deliver the returned check to the depositary bank on Thursday.

The Board therefore proposes to reduce in proposed § 229.12(d) (current § 229.12(f)) the maximum hold period for nonproprietary ATM deposits from 5 business days to 4 business days. Four business days will provide the depositary bank with reasonable opportunity to learn of the nonpayment of a check deposited at a nonproprietary ATM before it must make the funds available for withdrawal.[43] In the example above, the depositary bank can reasonably expect to learn of an unpaid electronically returned check on Thursday, and will be required under the proposed 4-business-day hold period to make funds deposited by check at a nonproprietary ATM

[39] These checks include U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, checks drawn by state or local governments, or cashier's checks, certified checks, or teller's checks.

[40] Current § 229.12(b) states which checks are subject to second-day availability. These checks include local checks and checks that meet the requirements of §§ 229.10(c)(1)(ii), (iii), (iv), or (v), except the check is not deposited in person.

[41] The EFA Act conference report states that "nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits" (H.R. Rep. No. 261, 100th Cong., 1st Sess. 179 (1987)).

[42] Conference Report on H.R. 27 (H. Rept. 100–261), 100th Congress, 1st session, 179 (1987), pp. H6906–7.

[43] Section 229.19(b) requires that funds be made available for withdrawal by the opening of business on the day on which funds are required to be made available for withdrawal.

available for withdrawal at the opening of business on Friday.[44]

As mentioned above, Congress recognized in the EFA Act legislative history that depositary banks generally do not know the composition of deposits made at nonproprietary ATMs (that is, whether the deposit consisted of cash, local checks, nonlocal checks, etc.), and therefore adopted a five-day maximum hold on nonproprietary ATM deposits to match the five-day maximum hold on a nonlocal check deposit. Currently, however, all cash deposits not made in person to an employee of the depositary bank and check deposits must be made available for withdrawal by the second business day following deposit. The Board requests comment on whether the funds-availability schedule's distinction between deposits to proprietary ATMs and deposits to nonproprietary ATMs continues to make sense in an environment where all in-person cash deposits and check deposits must be made available for withdrawal by the second business day following deposit.

C. Section 229.13—Exceptions

1. Section 229.13(b)—Large Deposits

Section 229.13(b) sets forth an exception to the funds-availability schedule for the aggregate amount of deposited checks totaling more than $5,000 on any one banking day to the extent the aggregate amount exceeds $5,000. Like other amounts specified in the EFA Act, this $5,000 threshold will be adjusted every five years for inflation. In order to facilitate future adjustments to the amount, the Board proposes to amend the commentary to § 229.13(b) by replacing references to "$5,000" with references to "the large-deposit amount." The Board proposes to make similar amendments throughout the commentary and model forms.

2. Section 229.13(d)—Repeated Overdrafts

Section 229.13(d) provides the depositary bank with an exception to the general availability schedule in § 229.12 for a check deposited into an account that has been repeatedly overdrawn in the preceding six months. The exception relates not only to overdrafts caused by checks, but also those caused by, for example, debit card transactions. The Board proposes to add a new paragraph, § 229.13(d)(3), clarifying that the exception does *not* include an attempted debit card transaction for which the depositary bank declined the authorization request, because in that case no debit card transaction has occurred.

3. Section 229.13(e)—Reasonable Cause to Doubt Collectability

Section 229.13(e) provides the depositary bank with an exception to the § 229.12 general availability schedule if the depositary bank has reasonable cause to believe that the check is uncollectible from the paying bank. The commentary currently states that a depositary bank cannot invoke this exception simply because a check is drawn on a bank in a rural area and the depositary bank knows it will not have the opportunity to learn of the nonpayment of the check before funds must be made available. If a check is collected and returned electronically, however, the rural location of a paying bank will not affect the time required to collect and return the check. The Board proposes to update the example in paragraph (4) of the commentary to § 229.13(e). Specifically, a depositary bank may not invoke this exception simply because a paying bank demands paper presentment and the depositary bank believes it is unlikely to receive the return prior to the time by which it must make the deposited funds available.

3. Section 229.13(g)—Notice of Exception

A depositary bank must provide notice to its customer when it invokes one of the exceptions in § 229.13 to apply an extended hold to a deposit. Section 229.13(g)(1)(i) sets forth the information that the notice must include. Currently, the notice must include the amount of the deposit that is being delayed. During consumer testing of the model forms, however, consumers were more readily able to recall the deposited check for which the funds were being held when the notice included the total amount of the deposit, rather than only the amount being held. Accordingly, the Board proposes to require that the notice of an exception hold contain the total amount of the deposit, in addition to the amount of the deposit being held. Additionally, consumers more readily understood when funds would be made available if the notice stated the day on which the funds will be made available, rather than explain availability in reference to the date of deposit. Therefore, the Board proposes to require that the notice specify the day funds will be made available instead of "the time period within which" the funds will be available for withdrawal. The Board proposes conforming changes to proposed model notice C–9.

Section 229.13(g)(1)(ii) states that if the notice is not given at the time of the deposit, the depositary bank shall mail or deliver the notice to the customer as soon as practicable, but no later than the first business day following the day the facts become known to the depositary bank, or the deposit is made, whichever is later. With the elimination of nonlocal checks, depositary banks must generally make check deposits available by opening of business on the second business day following the banking day of deposit. The Board believes that it is desirable for a customer to learn that its bank is extending a hold before the customer would expect the funds to become available under the bank's generally applicable availability policy. Further, it has become more feasible for banks to provide notices to their customers electronically, which results in near instant receipt of the notice to the customer. The Board therefore proposes that, if the customer has agreed to accept notices electronically, the depositary bank is required to send the notice such that the bank may reasonably expect the customer to receive it no later than the first business day following the day the deposit is made or the facts become known to the depositary bank, whichever is later. For example, the bank could e-mail notice of the hold to the customer. The Board requests comment on whether providing a notice in this fashion is practical.

Finally, § 229.13(g)(4) describes the notice that a depositary bank must provide when it applies an emergency-conditions hold. The Board proposes to update the commentary to § 229.13(g) to explain that a depositary bank may provide notice via postings to the depositary bank's website or through a directed e-mail.

4. Section 229.13(h)—Availability of Deposits Subject to Exceptions

If a check deposit is subject to an exception hold, § 229.13(h)(4) provides that a reasonable period for a hold extension is one business day (for a total of two) for a deposit of on-us checks, five business days (for a total of seven) for local checks, and six business days (for a total of eleven) for nonlocal checks and deposits into nonproprietary ATMs. The Board proposes that the safe harbor for the reasonable hold extension for a deposit of on-us checks remain one business day, and that safe harbor for the reasonable hold extension for other

[44] The Board is proposing to follow the analysis it set forth in 1999 that it would reduce the availability schedules in Regulation CC only after determining that the depositary bank can reasonably expect to learn of an unpaid check on the business day before the day on which the bank must make funds available for withdrawal at the opening of business. *See* 64 FR 37712 (July 13, 1999).

checks be reduced to two business days (from five or six business days), for a total of four business days for all other checks.[45]

Section 229.13(h)(4) would continue to permit a bank to apply a longer hold extension than this, but the bank would have the burden of establishing that the longer hold extension is reasonable. The Board is proposing conforming changes to the commentary to § 229.13(h).

In adopting Regulation CC's permanent availability schedules, the Board stated that the reasonable extended-hold periods are "designed to provide adequate time for the depositary bank to learn of the nonpayment of virtually all checks that are returned."[46] If a check is cleared and returned electronically, the depositary bank should receive the returned check in three business days. Checks that are not cleared and returned entirely in electronic form, however, will typically take longer to be returned to the depositary bank. The Reserve Banks, however, project that by year-end 2011, 97 percent of their checks will be cleared and returned entirely in electronic form, which the Board believes is representative of the industry as a whole.[47] Therefore, depositary banks will receive virtually all returned checks by the third business day after the day of deposit, with the depositary bank making funds available at opening of business on the fourth day. Although the proposed reasonable extended-hold period of two business days (four business days total) may increase risk for a depositary bank that does not accept electronic returns, the Board believes that the reduction in the exception hold safe harbor is warranted given that it will provide faster availability for depositors as well as an incentive for depositary banks to take advantage of electronic check-return infrastructure.

If the paying bank does not return checks electronically, the time required for a check to be delivered from the depositary bank to the paying bank and back again may be greater than three business days. A paying bank that does not send returned checks electronically, however, generally will not meet its expeditious return requirement, and the depositary bank may have a claim for any losses it incurs due to the failure of the paying bank to send the returned check expeditiously.

D. Section 229.15—General Disclosure Requirements

1. Section 229.15(a)

Section 229.15(a) sets forth the form requirements for disclosures under subpart B. In general, there are two types of disclosures under subpart B—funds-availability policy disclosures and delayed availability notices. Both types of disclosures must be written and in a form the customer may keep. The Board proposes to amend § 229.15(a) to clarify that the form requirements apply to both funds-availability policy disclosures and delayed availability notices required by subpart B.

2. Section 229.15(b)(1)

Section 229.15(b) states that "[i]n its disclosure, a bank shall describe funds as being available on 'the _____ business day after' the day of deposit." The Board's consumer testing of the model disclosures in Appendix C (discussed in more detail below), however, indicated that consumers may more readily understand alternative formulations of statements of when deposited funds will be available for withdrawal. The Board therefore proposes in § 229.15(b)(1) to provide banks with more flexibility regarding this description.[48] The proposal requires a bank in its disclosure or notice to specify the business day on which funds are available for withdrawal by describing that day in relation to the banking day on which the deposit is received, and to use in this description language substantially similar to that set forth in proposed § 229.15(b)(1). Under the proposal, for example, the banking day of receipt may be described as "the same business day," and the business day after the banking day of receipt may be described as "the next business day," or described using either cardinal or ordinal numbers, such as "2 business days" or "the second business day."

E. Section 229.16—Specific Availability Policy Disclosure

1. Section 229.16(b)(2)

Because the Board is eliminating references to local and nonlocal checks throughout the regulation and commentary, the Board proposes to delete the requirement that banks that distinguish between local and nonlocal checks in their availability policy disclose that a check payable through one bank (the bank whose routing number appears in the MICR line) and payable by another bank would be considered local or nonlocal on the basis of the location of the bank by which the check is payable. In the absence of nonlocal checks, that disclosure requirement is obsolete.

2. Section 229.16(c)(2)

Section 229.16(c)(2) sets forth the information required in a notice when a bank invokes a case-by-case hold. These information requirements are similar to the information requirements for exception-hold notices under § 229.13(g). Consumer testing demonstrated that consumers are both able to recall the deposit to which the hold is being applied if the notice states the total deposit amount and able to understand more readily the day on which funds will be made available if given a specific date. Therefore, the Board proposes to amend the case-by-case notice requirements in § 229.16(c)(2)(i) to require that a case-by-case notice include the total amount of the deposit and the specific date on which funds will be made available.

Further, in the absence of nonlocal checks, the case-by-case hold period is so short that a paper notice of the hold sent through the mail may not reach the customer until after the hold has been lifted. The Board therefore proposes to amend § 229.16(c)(2)(ii) and the related commentary to provide that, if the customer has agreed to accept notices electronically, a bank that invokes a case-by-case hold after the time of deposit be required to deliver the notice such that the bank may reasonably expect the notice to be received by the customer not later than the first business day following the banking day of deposit. For example, the bank could e-mail notice of the hold to the customer on the business day after the banking day of deposit. The Board requests comment on whether providing a notice in this fashion is practical.

In addition, the Board requests comment on the extent to which banks continue to find it useful to apply case-by-case holds to check deposits and on whether the regulation's provision for case-by-case holds should be deleted. In the absence of nonlocal checks, the extra hold period that a depositary bank may obtain by applying a case-by-case hold is generally not sufficient for the bank to learn that a deposited check has been returned unpaid before making funds available to the depositor.

[45] As described above, the Board proposes to reduce the generally-applicable hold period for nonproprietary ATM deposits from five business days to four. The proposed reasonable hold extension of two business days would therefore provide a total of six business days for nonproprietary ATM deposits.

[46] *See* 55 FR 21848, 21850 (May 30, 1990).

[47] *See* the Board's **Federal Register** notice announcing its approval of the Federal Reserve Banks' 2011 fee schedules for priced services, 75 FR 67740 (Nov. 3, 2010).

[48] Under the Board's proposal, a bank that bases its availability-policy disclosure on the models currently provided in Appendix C will continue to receive a safe harbor for doing so. *See* the discussion of Appendix C below in this section-by-section analysis.

F. Section 229.19—Miscellaneous

1. Section 229.19(e)(2)

Section 229.19(e)(2) limits the ability of a depositary bank that cashes a check for a customer to place a hold on other funds of the customer. The Board proposes to amend § 229.19(e)(2) to clarify that a depositary bank that cashes a check for a customer over the counter may place a hold on funds in an account of the customer only if the check is not drawn on the depositary bank. In contrast, if a depositary bank cashes a check drawn on itself, the check is considered finally paid when cashed under the U.C.C.[49] The Board intends no change to the substance of this provision.

2. Section 229.19(g)(2)

The Board proposes to delete as obsolete the provision regarding mergers between July 1, 1998, and March 1, 2000.

G. Section 229.21(g)—Record Retention

Current § 229.21(g) requires a bank to maintain records evidencing compliance with subpart B's requirements for not less than two years, and states that a bank may store records using, among other media, "microfiche, microfilm, [and] magnetic tape." These listed examples in § 229.21(g) of the types of media on which a bank may store records are obsolete, and the Board proposes to replace them with a more general provision that a bank may store records using "electronic storage media," among other media.

H. Appendix A—Routing Number Guide to Next-Day-Availability Checks

In the absence of nonlocal checks, it is no longer necessary to retain the portion of appendix A that lists under the single remaining Reserve Bank check-processing office (the head office of the Federal Reserve Bank of Cleveland) all banks' four-digit routing symbols. The Board proposes to delete this portion of the appendix, as well as the reference to the Federal Reserve Bank of Cleveland. The Board proposes to retain in the appendix the lists of nine-digit routing numbers associated with certain next-day-availability checks.[50] The Board also proposes to delete certain listed routing numbers of the Federal Reserve Banks and Federal Home Loan Banks that have been retired.

I. Appendix C, Model Availability-Policy Disclosures, Clauses and Notices

1. Consumer Testing Process

The model availability-policy forms in appendix C of Regulation CC include numerous obsolete provisions related to nonlocal checks. Additionally, the model forms were first published over 20 years ago, when Regulation CC was first promulgated. More recently, the Board has tested with consumers the model forms included with its other regulations.[51] In this instance, the Board used ICF Macro, a research and consulting firm that specializes in designing and testing documents, to conduct consumer testing to help the Board's review of the model availability-policy forms proposed in this notice. ICF Macro prepared a detailed report of the results of the testing, which is available on the Board's Web site (*http://www.federalreserve.gov*) along with this proposed rule.

The consumer testing consisted of two rounds of in-depth interviews with 9 consumers in Alexandria, Virginia, on August 19 and 20, 2010, and 11 consumers in Denver, Colorado, on September 13 and 14, 2010. Consumer participants were recruited to ensure the selection of a range of participants in terms of gender, education, ethnicity, and checking and savings account balances.[52] While the interview protocol varied slightly between rounds, the general structure and most of the questions were the same.

Prior to the first round of interviews, Board staff and ICF Macro collaboratively revised the forms from those currently found in appendix C.[53] For example, the format was substantially modified; provisions related to nonlocal checks were eliminated; and language was added regarding a bank's right to charge back a customer's account if a deposited check is returned unpaid. Based on the results of each round of interviews, the forms were again revised. The Board plans to conduct additional consumer testing of the forms in response to public comments received on this proposal, as appropriate.

2. Model Disclosures Generally

Citations below are to the forms in the appendix as they are proposed to be renumbered, unless otherwise explicitly stated. Forms not discussed below are either unchanged or have only technical or conforming amendments.

In the absence of nonlocal checks, the Board proposes throughout appendix C to delete all references to the nonlocal-check and local-check categories. Instead, the Board proposes that the forms, as applicable, specify the types of check deposits that receive next-day availability, and then state the availability that will be provided for checks "other than those specified."

The Board proposes to modify the format of the model disclosures from a mostly narrative form to a more tabular form. For example, the Board proposes that the portions of the model disclosures specifying funds availability for deposits to established accounts and for deposits to new accounts (accounts open for 30 days or less) be presented within tables. The Board's testing on forms under other rules has consistently indicated that consumers more readily understand information presented in a tabular form.[54]

The Board is not proposing any changes to the model substitute-check-policy disclosure and notices in the appendix.

i. Format of Banks' Funds-availability Disclosures and Notices

The Board proposes to add to the commentary to appendix C a new paragraph A(4) discussing banks' formatting of disclosures and notices based on the proposed model funds-availability disclosures and notices in the appendix. Specifically, although the regulation does not require banks to use a certain paper size for their funds-availability disclosures and notices, the proposed model funds-availability policy disclosures are generally designed to be printed on an 8½ x 11 inch sheet of paper with black text on a white background, so as to increase their readability for consumers. Further, § 229.15(a) requires that banks generally provide disclosures and notices in a form that the customer may keep.[55] The proposed commentary notes that a bank that provides a disclosure or notice

[49] *See* UCC 4–215 and commentary to Regulation CC § 229.19(e).

[50] Treasury checks, postal money orders, and checks drawn on the Federal Reserve Banks and Federal Home Loan Banks can be identified by routing number, and these routing numbers will continue to be listed in appendix A. Next-day-availability checks such as cashier's, certified, and teller's checks cannot be identified by routing number, however, and are not listed in the appendix.

[51] *See* Interim Final Rule on Mortgage Disclosures (Regulation Z), 75 FR 58470 (Sept. 24, 2010).

[52] A sample of the screening instrument used to recruit interview participants is included as Appendix A to the ICF Macro report. Appendix B to the report provides a summary of the demographics of the interview participants.

[53] The sample forms used during the consumer interviews are included as Appendix C to the ICF Macro report.

[54] *See* 75 FR 58539 at 58542 (September 24, 2010) and ICF Macro report, p. 4.

[55] The commentary to § 229.13(g) indicates that notice of an extended hold should be provided in a form the customer may keep. The proposed commentary to § 229.16(c)(2) indicates that notice of a case-by-case hold should be provided in this form as well.

electronically to a customer would comport with the formatting specifications of the proposed model disclosures and notices by providing a disclosure or notice in a file format, such as a .pdf file format, that electronically represents an 8½ x 11 inch sheet of paper with black text and a white background. In addition, a bank may vary (either enlarge or decrease) the font size of the model forms. As explained in the proposed commentary, a bank that uses too small a font may not be in compliance with § 229.15(a)'s clear-and-conspicuous requirement.

ii. Charge Back After Making Funds From Check Deposits Available

Paragraph 5 of the commentary to appendix C states that banks may add information related to funds availability to the model forms. One of the examples currently provided is that a bank's disclosure may state that although funds have become available and the customer has withdrawn them, the customer remains responsible for deposited checks that are returned unpaid. The Board believes that all banks reserve the right to charge back a customer's account if a deposited check is returned unpaid.[56] The Board proposes to incorporate language to this effect within the model availability-policy disclosures themselves and to delete this as an example from paragraph A(5) of the commentary and add a provision to paragraph B(1)(a) describing the charge-back statement in the proposed model disclosures. The Board requests comment on whether this proposed revision reflects the practice of most banks.

iii. Reference to Day of Availability

The Board is proposing model availability-policy disclosures that in many cases would use cardinal numbers, instead of ordinal numbers, to describe the business day on which funds will be available in relation to the day on which funds are deposited. For example, the Board proposes in many cases to use "2" in place of "second," because consumers readily perceived that formulation. In addition, the Board proposes that the disclosures refer to the "next" business day after a deposit, rather than the "first" business day. The Board proposes to modify paragraph B(1)(b) of the commentary accordingly. Notwithstanding the language used in the proposed model forms, use of ordinal numbers would continue to be permitted (*see* proposed § 229.15(b)).

iv. Inclusion of Optional Information

The Board proposes model availability-policy disclosures that would reflect certain provisions of the regulation that apply only to certain banks, depending on the banks' policies and practices. For example, the proposed model disclosures would include language about use of special deposit slips as a condition for next-day availability for certain types of check deposits (*see* § 229.10(c)(2) and language similar to the appendix's current model clauses C–6 and C–7 related to check cashing, immediate availability, and holds on other funds (*see* § 229.19(e)).[57] The text of these portions of the disclosures would be enclosed within brackets to indicate that a bank should include it in the bank's disclosures only if it is applicable given the bank's policies and practices. The Board proposes that paragraph B(1)(c) of the commentary to appendix C be modified accordingly.

v. Same-Day Availability

Although § 229.10(a) of the regulation requires next-day availability for cash deposits, and § 229.10(b) requires next-day availability for electronic payments (as defined in § 229.2(t)), the model availability-policy disclosures in appendix C include clauses that state that funds from electronic direct deposits are available on the day the bank receives the funds. As indicated in paragraph B(1)(b) of the commentary to the appendix, this is because U.S. Treasury regulations and ACH association rules require that preauthorized credits, such as direct deposits, be made available on the day the bank receives the funds.

During the Board's consumer testing, many consumers expressed surprise that the sample disclosures indicated that funds from cash deposits and wire transfers (defined in § 229.2(bbb)) would not be available until the next day. When the models in Appendix C were first published over 20 years ago, most banks updated their demand-deposit-account systems on an overnight basis, such that a cash deposit or incoming wire transfer would not be reflected in the receiving customer's account balance until opening of business the next day. The Board believes, however, that most banks now provide same-day (if not immediate) availability for cash deposits and wire transfers.

The Board therefore proposes that model funds-availability disclosures C–1 through C–3B, which are designed for banks that generally make deposits available by the next day (and are discussed in more detail below), be modified to indicate that funds from cash deposits and wire transfers will be available for withdrawal on the same business day that the bank receives the funds. The proposed commentary states that a bank basing its disclosure on one of these models should modify its disclosure to indicate that funds from cash deposits and wire transfers will be available the next day if that reflects the bank's practice.

In contrast, proposed models C–4A and C–4B, which are designed for banks that hold funds from deposits to the statutory limits, indicate that funds from cash deposits and wire transfers will be available on the business day following receipt. The proposed commentary states that a bank that bases its disclosures on one of these models but that makes funds from cash deposits and wire transfers available the same day they are received—*i.e.,* a bank that places holds to statutory limits only on check deposits—should modify its disclosures accordingly.

3. Model C–1—Next-Day Availability

Proposed model C–1 may be used by a bank that has a policy of making funds from all deposits available by the first business day after a deposit is made, but not reserving the right to invoke the new-account and other exceptions in § 229.13. The Board requests comment on whether any banks have such a policy and on whether model C–1 can be deleted from Appendix C.

4. Model C–2—Next-Day Availability and § 229.13 Exceptions

Proposed model C–2 may be used by a bank that has a policy of making funds from deposits available by the first business day after a deposit is made, but reserves the right to invoke the new-account and other exceptions in § 229.13.

5. Model C–3A—Next-Day Availability, Case-by-Case Holds to Statutory Limits Without Cash-Withdrawal Limitation, and § 229.13 Exceptions; and Model C–3B—Next-Day Availability, Case-by-Case Holds to Statutory Limits With Cash-Withdrawal Limitation, and § 229.13 Exceptions

The Board proposes to include in the appendix two versions of model C–3. The first version, proposed C–3A, would be used by a bank that, when it

[56] *See* § UCC 4–214, which generally permits a collecting bank that has made provisional settlement with its customer to revoke the settlement (*e.g.,* charge back the amount or obtain a refund) if the bank itself fails to receive settlement.

[57] Because the Board proposes to incorporate the information set forth in current model clauses C–6 and C–7 as bracketed information within the model disclosures, the Board proposes to delete model clauses C–6 and C–7 from the appendix.

delays availability on a case-by-case basis, does not impose the cash-withdrawal limitation permitted by § 229.12(b). The second version, proposed C–3B, would be used by a bank that does impose this limitation when it delays availability on a case-by-case basis. The additional text that is included in proposed C–3B, but not C–3A, related to the cash-withdrawal limitation, derives from current model clause C–10, modified to promote consumer comprehension on the basis of the Board's testing.[58] The Board proposes that this text be structured as a bulleted list, because the Board's testing indicated that consumers better noticed and understood the cash-withdrawal limitation (and the distinction between other uses of funds) when it is in this form rather than in a text paragraph.[59]

Proposed models C–3A and C–3B include in brackets language similar to current model clauses C–6 and C–7, related to check cashing, immediate availability, and holds on other funds, modified on the basis of the Board's testing to promote consumer comprehension. A bank that bases its disclosure on proposed model C–3A or C–3B would need to include this bracketed text in its disclosure only if the text corresponds to the bank's policy and practice. A bank that has such a policy would include the proposed bracketed text in the same location as in the proposed model. Testing indicated that consumers notice and retain the information presented in these clauses better if the location of the clauses is early in the disclosure.[60]

Banks that base their availability-policy disclosure on model disclosure C–3A or C–3B and whose availability policy necessitates incorporation of one or more of the proposed appendix's remaining model clauses (proposed C–6, C–7, and C–8; current C–9, C–11, or C–11A) would append those model clauses to the end of the second page of proposed model C–3A or C–3B. The appendix's remaining model clauses pertain to a bank's funds-availability policy for deposits at ATMs (proposed C–6), a credit union's interest-payment policy (proposed C–7), and the availability of funds deposited at other locations (proposed C–8).

6. Model C–4A—Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation; and Model C–4B—Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation

The Board proposes to remove current model disclosures C–4 (holds to statutory limits on all deposits (includes chart)) and C–5 (holds to statutory limits on all deposits), because those models are no longer necessary in the absence of nonlocal checks. The Board proposes to add new model disclosures C–4A and C–4B for a bank to use if the bank's policy is to hold funds on all deposits up to the statutory limits.

Proposed model disclosure C–4A would be used by a bank that delays availability as allowed under § 229.12 but does not impose the cash-withdrawal limitation permitted by § 229.12(b), whereas proposed model C–4B would be used by a bank that delays availability as allowed under § 229.12 and does impose the cash-withdrawal limitation permitted by § 229.12(b). The Board proposes the position of the text related to the cash-withdrawal limitation in C–4B because the Board's testing indicated that consumers better noticed and understood the information when placed at the proposed location and in the proposed format within the disclosure. Banks that base their availability-policy disclosure on proposed model disclosure C–4A or C–4B and whose availability policy necessitates incorporation of one or more of the proposed appendix's remaining model clauses (proposed C–6, C–7, or C–8) would append those model clauses to the end of the second page of proposed model C–4A or C–4B.

7. Proposed Model Clauses

The Board proposes to delete current model clauses C–6 (holds on other funds (check cashing)), C–7 (holds on other funds (other account)), and C–10 (cash-withdrawal limitation), all of which the Board proposes to be incorporated into other model forms. The Board also proposes to delete current model clause C–8 (Appendix B availability (nonlocal checks)) because it is obsolete in the absence of nonlocal checks. Within current model clause C–9 (Automated Teller Machine Deposits (Extended Hold)) (proposed C–6), the Board proposes to change "fifth business day" to "fourth business day" to conform to the changes in proposed § 229.12(d), discussed above in this section-by-section analysis.

8. Proposed Model Notices

i. Format

As with the proposed model funds-availability policy disclosures, the Board proposes to modify the format of the model notices, where appropriate, from a mostly narrative form to a more tabular form. For example, the Board proposes to convert current model notice C–18 (notice at locations where employees accept consumer deposits (case-by-case holds)) (proposed C–14) to a table.

ii. Proposed Model C–9—Exception or Reasonable-Cause Hold Notice

Current models C–12 and C–13 each include a checklist of reasons for which a bank may apply an exception hold. The Board's consumer testing on other disclosures has found that consumers may be confused by a listing of reasons, even though only one reason is checked and the others do not apply to the consumer's situation.[61] The Board therefore proposes model notices that describe only one reason for the hold, instead of a checklist of reasons. A bank using proposed model C–9 would insert the reason for the hold that is applicable to the consumer's situation in the location designated by "(*reason for hold*)." The checklist of reasons that is included in the current model would be moved to the proposed commentary, with proposed revisions for clarity. The proposed commentary also states that a bank may insert, in place of "(*reason for hold*)," a reason other than those listed in the commentary.

Current model C–12 (proposed C–9) indicates that a bank's notice of an exception hold should refer to the dollar amount being held from a deposit.[62] The Board proposes that proposed models C–12 also refer to the dollar amount of the deposit from which funds are being held. During the Board's testing, consumers more readily understood this approach and thought that the amount of the deposit would be more helpful in remembering the deposit in question.[63]

iii. Proposed Model C–12A—Case-by-Case Hold Notice Without Cash-Withdrawal Limitation and Proposed Model C–12B, Case-by-Case Hold Notice With Cash-Withdrawal Limitation

Current model C–16 (case-by-case hold notice) states that the day on

[58] Because the Board proposes to incorporate into C–3B and C–4B (discussed below) the information set forth in current model clause C–10, the Board proposes to delete model clause C–10 from the appendix.

[59] *See* p. vii of the ICF Macro report.

[60] The Board proposes to take an identical approach in proposed model disclosures C–4A and C–4B. Specifically, a bank that bases its disclosure on proposed model C–4A or C–4B would include the bracketed text in its disclosure only if the text corresponds to the bank's policy and practice.

[61] *See* 75 FR 58539 at 58560 (September 24, 2010), discussing the results of the Board's testing of model forms related to the suspension or reduction of a home equity line of credit. *See* also the ICF Macro report, page viii.

[62] Specifically, the model reads "We are delaying the availability of $(*amount being held*) from this deposit."

[63] *See* ICF Macro report, p. ix.

which funds will be available for withdrawal may be "([*subject to our cash-withdrawal limitation policy*])." The limitation is material to the length of the hold, and, without additional inquiry, consumers may not know what the limitation is. Accordingly, the Board proposes to include in appendix C two versions of a model case-by-case hold notice: proposed C–12A may be used by a bank that imposes a case-by-case hold, but does not have a policy of imposing the cash-withdrawal limitation, whereas proposed model notice C–12B may be used by a bank that imposes such a hold and does have such a policy. Each of the two proposed versions would incorporate the specific days by which funds would be available.

Current model C–16 indicates that a bank's notice of an exception hold should refer to the dollar amount being held from a deposit. The Board proposes that proposed models C–12A, and C–12B also refer to the dollar amount of the deposit from which funds are being held, because consumers thought that the amount of the deposit would be more helpful in remembering the deposit in question.[64]

iv. Proposed Model C–13—Notice at Locations Where Employees Accept Consumer Deposits and Proposed Model C–14—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)

Current models C–17 and C–18 (proposed C–13 and C–14) are notices that are designed to be posted, for example, on a wall near a teller window in a bank branch, and set forth a brief summary of a bank's funds-availability policy. Current model C–17 may be used by a bank that has a policy of placing holds to statutory limits on deposits, whereas current model C–18 may be used by a bank that has a policy of placing case-by-case holds on check deposits.

The Board proposes to modify current model notice C–18 (proposed C–14) to indicate that funds from cash deposits and wire transfers will be available for withdrawal on the same business day that the bank receives the funds. Therefore, a bank with a case-by-case availability policy that makes cash deposits and wire transfers available the next business day would modify the notice accordingly. By contrast, current model C–17 (proposed C–14) indicates that funds from cash deposits and wire transfers will be available on the next business day. A bank that holds check deposits up to the statutory limits but that makes funds from cash deposits and wire transfers available on the day they are received would modify the notice accordingly.

A bank using either notice that imposes cash-withdrawal limitations under proposed § 229.12(b) would indicate that funds from check deposits will generally be available by the third, rather than second, business day after the day of deposit, by replacing "(*number*)" in the lower-right-hand box of the tables in the proposed models with "third," rather than "second."

J. Appendix F—Official Board Interpretations; Preemption Determinations

Section 608 of the EFA Act provides that any state law in effect on September 1, 1989, that provides that funds be made available in a shorter period of time than provided in Regulation CC will supersede the time periods in the Act and regulation. Section 229.20 of the regulation implements § 608, and § 229.20(e) sets forth the procedures by which a state may submit to the Board a request for a preemption determination. In response to states' requests, the Board issued determinations specifying the provisions of the funds availability laws in California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, Rhode Island, and Wisconsin that supersede the EFA Act and Regulation CC. These determinations are contained in appendix F to the regulation.

Since September 1, 1989, Connecticut, New Jersey, Rhode Island, and Wisconsin have repealed all state-specific funds availability provisions. California has repealed the funds availability provisions applicable to credit unions. In addition, the elimination of nonlocal checks under the EFA Act and Regulation CC affect the regulation's preemption of states' laws. The Board notes that the Dodd-Frank Act's increase from $100 to $200 of the minimum amount of check deposits that banks must make available by the next business day may affect the EFA Act and Regulation CC preemption of state law. The Board therefore proposes to update the preemption determinations in the appendix. The proposed determinations would supersede any previous determinations made by the Board.

III. Subpart C

A. Section 229.30—Paying Bank's Responsibility for Return of Checks

1. Section 229.30(a)—Expeditious Return of Checks

i. Section 229.30(a)(1)

Section 229.30(a)(1) sets forth the proposed test for expeditious return of a check by the paying bank. The current rule provides that if a paying bank determines not to pay a check, it must return the check in an expeditious manner, as provided under either the two-day/four-day test or the forward-collection test. For the reasons discussed above, the Board proposes to eliminate the forward-collection test and the four-day test for expeditious return of a check by the paying bank. As a result, the Board proposes that the two-day test for expeditious return be the only test for expeditious return in § 229.30(a)(1) (and § 229.31(a)(1)). In general, the paying bank may satisfy any expeditious return requirement by sending an electronic return if the depositary bank has agreed to receive electronic returns from the paying bank under proposed § 229.32(a), a paper check or a notice in lieu if the check is unavailable. The exceptions to this general rule, including where the depositary bank has not agreed to accept electronic returns from the paying bank, are set forth in proposed § 229.30(b).

ii. Section 229.30(a)(3)

The Board proposes to amend § 229.30(a)(3) to clarify that a paying bank may send a returned check to any bank that handled the check for forward collection if the paying bank is unable to identify the depositary bank.

iii. Section 229.30(a)(6)

The Board proposes to move current § 229.36(a), which states that a check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious-return requirement of this subpart, to proposed § 229.30(a)(6).

2. Section 229.30(b)—Exceptions to Expeditious Return of Checks

i. Section 229.30(b)(1)

The Board proposes to group together the exceptions to a paying bank's duty of expeditious return in § 229.30(b)(1). Currently, the requirement does not apply if a paying bank is unable to identify the depositary bank or if the depositary bank does not maintain

[64] *See* ICF Macro report, p. ix.

accounts.[65] As described above, the Board proposes that a paying bank have a duty of expeditious return only if the depositary bank has agreed to accept electronic returns from the paying bank under proposed § 229.32(a). The Board proposes to set forth this rule as an exception to the general rule stated in proposed § 229.30(a)(1). Accordingly, proposed § 229.30(b)(1)(i) states that a paying bank need not return a check expeditiously if a depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a). Although not imposing an expeditious return requirement on the paying bank in this situation will expose the depositary bank to risk, the Board believes that risk should rest with the bank choosing not to take advantage of an electronic infrastructure that provides expeditious return.

The proposed commentary to § 229.30(b)(1) includes an example of when the paying bank's duty of expeditious return would and would not apply. For example, assume that a depositary bank has not agreed to accept electronic returns directly from the paying bank, but has agreed to accept electronic returns from Returning Bank A, which has agreed to handle returns expeditiously under § 229.31(a). If Returning Bank A has not held itself out as willing accept electronic returns directly or indirectly from the paying bank (*e.g.,* the returning bank has not published electronic return service set-up guides), the depositary bank has not agreed to accept electronic returns from the paying bank under proposed § 229.32(a). If a check is presented to the paying bank on Monday, the paying bank would not need to send the returned check such that the depositary bank normally would receive the returned check by 4 p.m. (local time of the depositary bank) on Wednesday. The paying bank, however, must comply with any deadlines under the Uniform Commercial Code, Regulation J (if sent through the Reserve Banks), or § 229.30(c).

Under the proposed approach, a paying bank that returns checks in paper form would be subject to the expeditious return requirement if the depositary bank has agreed to accept electronic returns from a returning bank that holds itself out as willing to accept electronic returns directly or indirectly from the paying bank and agrees to return checks expeditiously. The Board, however, notes that if the returning bank from which the depositary bank has agreed to accept electronic returns has either not held itself out as willing to accept electronic returns directly or indirectly from the paying bank or has not agreed to return checks expeditiously, then the paying bank would not be subject to the expeditious return requirement under the proposal.

ii. Section 229.30(b)(2)

Proposed § 229.30(b)(2) addresses the situation in which the requirement to return a check expeditiously does not apply because the paying bank is unable to identify the depositary bank. In most cases in today's predominantly electronic check-clearing environment, the depositary bank's indorsement will accompany an electronic check as an addenda record associated with the check, and the paying bank will be able to route an electronic return to the depositary bank in a highly automated manner.[66]

In some cases, the depositary bank's indorsement may not be in the accompanying addenda record, and the paying bank will be unable to rely on purely automated returns. The Board proposes to clarify in the commentary that a paying bank is not "unable" to identify the depositary bank where the depositary bank's indorsement is not in an addenda record associated with the electronic image, but is legibly included within the image of a check presented electronically to the paying bank. In these cases, the paying bank may visually review the image of the check to determine the identity of the depositary bank and create an electronic return addressed to the depositary bank or a returning bank agreeing to handle it on the basis of that indorsement within the image. Provided the depositary bank accepts electronic returns (directly or indirectly) from the paying bank under § 229.32(a), the expeditious-return requirement would apply in this situation.

In other cases, however, the depositary bank's indorsement may not be in an addenda record associated with an electronic image, and also may be absent from or illegible within the image of the check that is presented to the paying bank. In these cases, the paying bank may be unable to identify the depositary bank and the expeditious-return requirement would not apply to the paying bank. If the paying bank has an agreement to send electronic returns to a bank that handled the check for forward collection, the paying bank may under § 229.30(b)(2) send the electronic return to that bank, subject to that agreement. Such a bank may be better able to identify the depositary bank. In general, the paying bank must advise the bank to which the return is sent that it is unable to identify the depositary bank. The Board proposes to clarify in the commentary that, in the case of electronic returns, the paying bank meets this requirement by inserting the routing number of the bank to which it is sending the return where the paying bank otherwise would have inserted the routing number of the depositary bank. The Board requests comment on whether the regulation and commentary provide the appropriate level of detail with respect to paying banks' preparation and addressing of electronic returns in cases where it is unable to identify the depositary bank.

3. Section 229.30(c)—Extension of Deadline

The Board proposes amending § 229.30(c), which extends the paying bank's deadline to initiate the return of a check. The current rule generally extends the deadline to the time at which a paying bank dispatches the return, if the paying bank uses a means of delivery that ordinarily would result in receipt by the bank to which the return is sent on or before the receiving bank's next banking day following the day of the applicable deadline by the earlier of the close of that banking day or a 2 p.m. cutoff hour (or such later time as set by the receiving bank under UCC 4–108).[67] The provision allows the paying bank an extension, provided that the paying bank sends the return such that it would ordinarily be received by the depositary bank within the timeframes mandated by the regulation's current tests for expeditious return.

As discussed above, the Board proposes to eliminate the forward-collection test and the four-day test for expeditious return of a nonlocal check, such that the two-day test for expeditious return would be the only remaining test. Correspondingly, the Board proposes to simplify the extension in § 229.30(c): The paying bank's deadline for return would be extended to the time of dispatch if the paying bank sends the return such that

[65] In the current regulation. these exceptions to a paying bank's duty of expeditious return are set forth, respectively, in §§ 229.30(b) and 229.30(e). The exceptions to a returning bank's duty are in §§ 229.31(b) and 229.31(e).

[66] As is discussed below under § 229.35(a) and appendix D, the Board proposes to require a depositary bank that transfers an electronic collection item to apply its indorsement in accordance with ANS X9.100–187, unless the parties otherwise agree.

[67] The current paragraph provides a further extension if the paying bank uses a "highly expeditious" means of return, or if the paying bank's deadline for return falls on a Saturday that is a banking day for the paying bank under the UCC. (Saturday is never a banking day under Regulation CC.)

it reaches the depositary bank by 4 p.m. on the second business day after the banking day on which the check was presented to the paying bank; *i.e.,* such that the return would ordinarily reach the depositary bank within the time required by the two-day expeditious-return test. The proposed 4 p.m. deadline would correspond to the expeditious return deadline in proposed §§ 229.30(a). As noted in the proposed commentary, a paying bank may rely on the return schedules of a returning bank in determining whether the returned check or electronic return would "ordinarily" reach the depositary bank by 4 p.m. on the second business day after the banking day on which the check was presented to the paying bank.

Alternatively, the Board requests comment on whether a paying bank that sends a returned check to a returning bank and relies on this extension should bear the risk that the returning bank may not return the check expeditiously. Specifically, the Board requests comment on whether it should modify the extension such that the return must actually reach the depositary bank within the two-day timeframe for expeditious return in order for the extension to apply. Such a modification to the extension might further encourage paying banks to initiate return of a check in a timely fashion.

4. Section 229.30(d)—Identification of a Returned Check

i. Placement of Reason for Return on a Substitute Check

Section 229.30(d) currently states that "[a] paying bank returning a check shall clearly indicate on the face of the check that it is a returned check and the reason for return. If the check is a substitute check, the paying bank shall place this information within the image of the original check that appears on the front of the substitute check." When current § 229.30(d) became effective in 2004, the placement on substitute checks was consistent with the industry standard for substitute checks, American National Standard Specifications for an Image Replacement Document—IRD, X9.100–140 (ANS X9.100–140). Under the terms of the revised industry standard, however, the reason for return of a substitute check must be placed above a substitute check's image of the original check—*i.e.,* not within the image of the original check that appears on the front of the substitute check, but nonetheless within the portion of the front of the substitute check that is "clipped" when an image of the substitute check is captured.[68] The change to the standard is intended to make it less likely that the return-reason information will obscure underlying data from the original check, such as the name of the payee or the amount of the check, while continuing to ensure that the reason for the return is retained in any captured image of the substitute check, as well as on any subsequent substitute check.

The current commentary explains that § 229.30(d) specifies where to place the return-reason information on a returned substitute check in order to ensure that "the information is retained on any subsequent substitute check." The revised industry standard, ANS X9.100–140, is consistent with this purpose. Accordingly, the Board proposes to modify the § 229.30(d) to state that "[i]f the check is a substitute check or electronic return, the paying bank shall place this information [the reason for the return] such that the information would be retained on any subsequent substitute check." Further, the Board proposes to amend the commentary to state that the requirement to place the return-reason information such that it is retained on any subsequent substitute check could be met by placing the information (1) in the location on the front of the substitute check that is specified by ANS X9.100–140 or (2) within the image of the original check that appears on the front of the substitute check. The Board believes it is necessary for the regulation to continue to permit this latter possibility in order to encompass situations in which a paying bank presented with a previously-created substitute check opts to physically stamp the reason for the return on the substitute check.

ii. Refer-to-Maker Reason for Return

Current commentary to § 229.30(d) states that "refer to maker" may be a permissible reason for return in appropriate cases but does not elaborate as to which cases may be appropriate. The Board, however, does not believe that "refer to maker," by itself, is an appropriate reason for return in any case. "Refer to maker" is an instruction rather than a reason for return. Alone, it does not provide the depositary bank with sufficient information to determine whether it should represent the check. Accordingly, the Board proposes to amend the commentary to § 229.30(d) to state that "refer to maker" is insufficient as a reason for return, because "refer to maker" is an instruction to the recipient of the returned check and not a reason for return (*e.g.,* insufficient funds). A paying bank may use "refer to maker" in addition to the reason for return. The Board requests comment on whether there are circumstances in which it is appropriate to use only "refer to maker" when returning a check.

5. Section 229.30(e)—Notice in Lieu of Return

Section 229.30(f) currently states that if a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in current § 229.33(b).

Historically, notices in lieu of return were used when an original check was lost or destroyed. Following implementation of the Check 21 Act, however, the unavailability of an original check does not prevent return of the check, provided that an image of the check sufficient to create a substitute check is available. The Board therefore proposes to revise the § 229.30(e) commentary to provide that a bank may send a notice in lieu of return only where neither the check itself nor an image of and information related to the check sufficient to create a substitute check is available.

The commentary states that notice by electronic transmission, other than a legible facsimile or similar image of both sides of a check, does not satisfy the requirements for a notice in lieu of return. The Board proposes to amend the commentary to § 229.30(e) to provide that, if no image of both sides of the check is available, the notice in lieu of return may be sent by means of an electronic transmission, so long as it contains the required information. For example, the notice may be sent by ACH payment record if permitted by applicable ACH rules, or by an electronic check record if permitted by applicable rules and standards. These records are similar to the currently-permitted written notices of nonpayment where legible copies of both sides of the check are unavailable. The Board requests comment, however, on whether a bank would ever have the information necessary for a notice in lieu of return if it had neither the check nor an image of both sides of the check. As under the current rule, notice by telephone or other similar oral transmission would not be permitted.

Because notice in lieu of return must include the information required for a notice of nonpayment, and the Board

[68] In addition to the image of the front of the original check, the portion of the front of the substitute check that is clipped includes the area on the check above the original check image and the routing number of the truncating bank to the left of the image.

proposes to eliminate the notice of nonpayment requirement, the Board proposes to move the information requirements for a notice in lieu of return from current § 229.33(b) to new § 229.30(e)(2). The Board proposes that the information requirements for a notice in lieu of return remain unchanged.

Currently, a notice in lieu is not required to contain the check's original MICR line. The Board understands, however, that a depositary bank can often use the data from the original MICR line of a returned check to find in its computer systems an image of the item, which the depositary bank captured when it took the check for deposit, and which the depositary bank can either re-clear or charge back to its customer's account.[69] The Board requests comment on whether the information-content specifications for a notice in lieu of return should be modified to reflect these capabilities by requiring that a notice in lieu of return include the check's original MICR line.

As an alternative to the proposed approach, the Board requests comment on whether the regulation's provision for notice in lieu of return should be deleted. Specifically, the only factual scenario in which a notice in lieu of return may be necessary under the proposal is where a paper check is presented to the paying bank and the paying bank loses the check, but has access to a copy that is not in the proper format to permit creation of a substitute check or electronic return. Forward interbank check collection, however, including presentment to the paying bank, is almost always electronic, and, furthermore, paying banks initiate almost all check returns electronically. Given the overwhelming prevalence of electronic presentment and electronic initiation of return, the paying bank almost always will be able to return an electronic collection item that was presented to it. Therefore, it may no longer be necessary for paying banks to use notices in lieu of return.[70] The Board requests comment on whether a provision for notice in lieu of return continues to be necessary.

6. Section 229.30(f)—Reliance on Routing Number

The regulation currently provides that a paying bank may return a check based on any routing number designating the depositary bank appearing on the check in the depositary bank's indorsement. The Board proposes in § 229.30(f) to add that the paying bank may also rely on any routing number designating the depositary bank in the electronic image of or information related to the check.

B. Section 229.31—Returning Bank's Responsibility for Return of Checks

1. Section 229.31(a)—Expeditious Return of Checks

i. Section 229.31(a)(1)

For the reasons discussed above under § 229.30(a)(1), the Board proposes to make conforming amendments to § 229.31(a) and eliminate the forward-collection test and the four-day test for expeditious return of a check by the returning bank, such that the two-day test for expeditious return would be the only test in § 229.31(a)(1). Further, a returning bank would be subject to the expeditious return requirement if it agrees to return checks expeditiously. The Board proposes to amend the commentary to § 229.31(a)(1) to explain that a returning bank may condition its agreement to return checks expeditiously on receiving an electronic return from the paying bank or returning bank. The Board also proposes to amend the commentary to § 229.31(a)(1), by removing as an example of when a returning bank agrees to return checks expeditiously a returning bank handling a returned check for return that it did not handle for forward collection. While the Board intends a paying bank to continue to be able to send a returned check to a returning bank that did not handle the check for forward collection, the Board does not believe that a returning bank that receives such a check should be deemed to agree to handle the returned check expeditiously. Under this proposed change, for example, a returning bank may accept a paper returned check that it did not handle for forward collection, while not being deemed to have agreed to handle it for expeditious return.

ii. Section 229.31(a)(3)

The Board proposes to clarify in proposed § 229.31(a)(3) (currently in § 229.31(a)) that if the returning bank is unable to identify the depositary bank with respect to a returned check, it may send the returned check to any bank that handled the check for forward collection if it was not a collecting bank with respect to the check, or to a prior collecting bank if it was a collecting bank.

iii. Section 229.31(a)(4)

The substance of proposed § 229.31(a)(4) (currently in § 229.31(a)) currently provides that a returning bank's time for expeditious return under the forward-collection test and its deadline for return are extended by one business day if the returning bank converts a returned check to a qualified returned check.[71] This extension does not apply to the two-day/four-day test, and it does not apply when the returning bank sends the check directly to the depositary bank, because in that case qualifying the check does not expedite its handling by the bank to which it is sent.

The Board proposes to eliminate this extension. The extension does not apply to the two-day test for expeditious return, which the Board proposes to be the sole test. Further, the extension, if retained, might benefit returning banks that choose to qualify and send paper returned checks destined for depositary banks that have agreed to accept returns electronically; a result that is inconsistent with the policy of encouraging electronic return of checks. In addition, if a returned check is destined for a depositary bank that does not accept returned checks electronically (*i.e.,* if the returned check is one to which the proposed two-day test does not apply), the Board believes that a returning bank's midnight deadline affords it sufficient time to process and send the returned check, irrespective of whether the returning bank qualifies the returned check or not.

A qualified return check is prepared for automated return by placing the check in a carrier envelope or placing a strip on the check. According to current industry practice, however, such envelopes should be used only in situations in which the check has been mutilated and cannot be imaged or handled by automated check-processing equipment. Therefore, the Board requests comment on whether the regulation should continue to allow a bank to prepare a check for automated return by placing the check in a carrier envelope. Further, in today's predominantly electronic check-clearing environment, qualification of paper

[69] If the depositary bank chooses to re-clear a check on the basis of an image of the check it captured when it took the check for deposit, it should ensure that the re-cleared check reflects the fact that the check has already been returned one time.

[70] If an electronic collection item presented to the paying bank contained an illegible image of the check and the paying bank decided to return the item (perhaps for an unrelated reason, such as insufficient funds), the paying bank could return the electronic collection item as an electronic return, instead of initiating a notice in lieu of return.

[71] A qualified returned check is "a returned check that is prepared for automated return to the depositary bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink." Current 12 CFR 229.2(bb).

returned checks happens only rarely and it is not clear that qualification continues to be a means of expediting returned checks' delivery to the depositary bank because carrier envelope's inhibit check imaging. The Board requests comment on whether the regulation's provisions for qualifying of paper returned checks by paying banks and returning banks should be deleted.

2. Section 229.31(b)—Exceptions to Expeditious Return of Checks

The Board proposes changes to § 229.31(b) similar to those discussed above under § 229.30(b). Specifically, the Board proposes to group together the current exceptions to a returning bank's duty of expeditious return in § 229.31(b)(1) and to provide that, in addition to the exceptions currently provided in the regulation, the returning bank's duty of expeditious return does not apply if the depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a).

A returning bank does not have a duty to expeditiously return the check if the returning bank is not able to identify the depositary bank with respect to a returned check. Section 229.31(b) of the regulation currently provides, however, that if a paying bank is not able to identify the depositary bank with respect to a returned check and sends the returned check under the terms of § 229.30(b) to a returning bank, but the returning bank can identify the depositary bank (for example, on the basis of its records from the forward collection of the check), then the returning bank must thereafter return the check expeditiously to the depositary bank. The Board proposes to remove this requirement from the regulation (proposed § 229.31(b)(1)(iv)), because it may be difficult for a returning bank to meet the two-day test for expeditious return where the paying bank likely sent the return as if the return was not subject to the expeditious return requirement. In the absence of an expeditious-return requirement, the UCC would nonetheless require a returning bank in this situation to use ordinary care when returning the item.[72]

3. Section 229.31(d)—Charges

The Board proposes to clarify in § 229.31(d) that a returning bank may impose a charge for handling a returned check on the bank that sent the returned check to it, rather than another party.

4. Section 229.31(e)—Notice in Lieu of Return

The Board proposes to make amendments to § 229.31(e) to conform with proposed amendments to § 229.30(e).

5. Section 229.31(f)—Reliance on Routing Number

The regulation currently provides that a returning bank may return a check based on any routing number designating the depositary bank appearing on the check in the depositary bank's indorsement or in magnetic ink on a qualified returned check. The Board proposes to add that the returning bank may also rely on any routing number designating the depositary bank in the electronic image or information included in an electronic return.

C. Section 229.32—Depositary Bank's Responsibility for Returned Checks

1. Section 229.32(a)—Acceptance of Electronic Returns

i. Section 229.32(a)(1)

The Board proposes in § 229.32(a)(1) three different circumstances under which a depositary bank would be deemed to have agreed to accept an electronic return from the paying bank. The depositary bank must accept an electronic return in at least one of these ways so as to be entitled to expeditious return under the Board's proposal. The first way in which a depositary bank is considered to have agreed to accept electronic returns from the paying bank is by having a direct contractual relationship with the paying bank under which it agrees to accept electronic returns from the paying bank (proposed § 229.32(a)(1)(i)).

Secondly, under proposed § 229.32(a)(1)(ii), a depositary bank could have a direct contractual relationship with a returning bank to accept electronic returns. In turn, that returning bank must hold itself out as willing to accept electronic returns directly or indirectly (*e.g.,* from another returning bank) from the paying bank and must have agreed to handle returned checks expeditiously under § 229.31(a) in order for the depositary bank to have agreed to receive electronic returns from the paying bank under § 229.32(a). The proposed commentary to proposed § 229.32(a) provides an example of such an arrangement. The Board proposes to provide examples in the proposed commentary to proposed § 229.32(a) of how a returning bank holds itself out as willing to accept electronic returns directly or indirectly from the paying bank. Specifically, a returning bank would be considered to hold itself out as willing to accept electronic returns if it published information about its generally available electronic return service, such as information about signing up for the service and fees. The Board requests comment on whether it should provide more specificity as to under what circumstances a returning bank is deemed to hold itself out as willing to accept electronic returns directly or indirectly from a paying bank.

Third, a depositary bank may have otherwise agreed with the paying bank to receive an electronic return. The proposed commentary indicates that one example of such an agreement would be where the depositary bank and paying bank are both members of the same check clearing house, through which the depositary bank has agreed to accept electronic returns from the paying bank.

ii. Section 229.32(a)(2)

Proposed § 229.32(a)(2) establishes that a depositary bank receives an electronic return when the return is delivered to the electronic return point designated by the bank or, by agreement, otherwise is made available to the bank for retrieval or review. For example, if a depositary bank designates an e-mail address as its electronic receipt address, the depositary bank has received the electronic return when it is delivered to that e-mail address. In contrast, if the depositary bank has an arrangement with a returning bank whereby the returning bank sends the electronic return to its storage device and then provides the depositary bank with access to the storage device for retrieving electronic returns, the electronic return is received by the depositary bank when the returning bank makes the electronic return available for the depositary bank to retrieve or review from the storage device in accordance with the agreement between the depositary bank and the returning bank.

iii. Section 229.32(a)(3)

Proposed § 229.32(a)(3) would permit a depositary bank to require that electronic returns be separated from electronic collection items. This proposed rule is similar to the undesignated paragraph in existing § 229.32(a) (proposed § 229.32(b)(2)) that permits a depositary bank to require that returned checks be separated from forward-collection checks.

[72] UCC § 4–202 states that a collecting bank exercises ordinary care "by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness."

2. Section 229.32(b)—Acceptance of Paper Returned Checks

The Board proposes to clarify that current § 229.32(a) (proposed to be redesignated as § 229.32(b)) is limited to setting forth the locations at which a depositary bank must accept paper returned checks. Further, because there are no more nonlocal checks, the Board proposes to delete current § 229.32(a)(2)(iii) from the regulation, which states that if the address in the depositary bank's indorsement is not in the same check-processing region as the address associated with the routing number in its indorsement, the depositary bank must accept returned checks both at a location consistent with the address in the indorsement and at an office associated with the routing number.[73] Under the proposal, a depositary bank that includes its address in its indorsement is required to receive paper returned checks at a location consistent with the address (proposed § 229.32(b)(1)(ii)(A)) and at a location, if any, at which it requests presentment of paper checks (proposed § 229.32(b)(1)(i)). Moreover, the depositary bank may structure its operations such that these two locations are the same, *i.e.,* such that the depositary bank accepts paper returned checks at only one location.

The Board proposes that a depositary bank is entitled to expeditious return only if it agrees to accept an electronic return under § 229.32(a). The Board anticipates that virtually all depositary banks will agree to do so, and that a depositary bank that accepts electronic returns will generally prefer to receive all returns in electronic form. Further, return of a paper check to such a depositary bank should be rare, because under the Board's proposal a paper returned check must be delivered to the bank within the two-day timeframe for expeditious return, and delivery of a paper check within that timeframe is generally difficult and costly. The Board believes it is therefore appropriate for a depositary bank to be able to limit to one the number of locations at which it must accept returned checks. If the bank specifies a location for delivery of paper returned checks that is difficult to reach, and the depositary bank has not agreed to accept electronic returns from the paying bank, the risk of any delay falls mainly on the depositary bank itself.

[73] The Board also proposes to delete the second sentence of paragraph 8 of the commentary to § 229.35(a), which states that if the address in the indorsement is not consistent with the routing number, then the depositary bank must accept returned checks at a branch or head office consistent with the routing number.

3. Section 229.32(e)—Charges

In § 229.32(e), the Board proposes to clarify that a depositary bank may not impose a charge for accepting and paying the check on the bank returning a check to it, as opposed to other parties on which it is permitted to impose charges.

4. Section 229.32(f)—Notification to Customer

Current § 229.33(d) states that if the depositary bank receives a returned check, it must provide notice of the facts to its customer by midnight of the banking day following the banking day on which it received the returned check, or within a longer reasonable time. The Board proposes to redesignate current § 229.33(d) as § 229.32(f). The commentary to this section is proposed to be revised to remove outdated provisions.

D. Current § 229.33—Notice of Nonpayment

For the reasons discussed above, the Board proposes to delete the requirement in current § 229.33 that a paying bank provide notice of nonpayment of a check in the amount of $2,500 or more. Further, the Board proposes, where appropriate, to delete references to notices of nonpayment throughout subpart C.

E. Section 229.33—Electronic Returns and Collection Items

The Board's proposal defines two new items: electronic returns and electronic collection items. The proposal permits paying banks to send electronic returns to depositary banks that have agreed to receive them, either directly or indirectly, from the paying bank; the proposal also permits paying banks to require that items presented for same-day settlement be presented as electronic collection items. Because such items are intended to take the place of original paper checks or substitute checks, proposed new § 229.33 provides that electronic collection items and electronic returns are subject to the requirements of subpart C as if they were checks, unless the subpart provides otherwise. For example, if a paying bank receives presentment of an electronic collection item and returns it unpaid, it would be subject to the regulation's expeditious-return requirement, provided the depositary bank has agreed to accept electronic returns from the paying bank under § 229.32(a). Similarly, a depositary bank that receives an electronic return must so notify its customer, as required under § 229.32(f).

F. Section 229.34—Warranties and Indemnities

1. Section 229.34(a)—Transfer and Presentment Warranties With Respect to an Electronic Collection Item or an Electronic Return

Proposed § 229.34(a) sets forth the warranties that a bank makes when it transfers or presents an electronic collection item or electronic return and receives consideration. The Board proposes that the bank warrant that (1) the electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated and the electronic information contains an accurate record of all MICR line information required for a substitute check under § 229.2(rr) and the amount of the check; and (2) no person will receive a transfer, presentment, or return of, or otherwise be charged for, an electronic collection item, an electronic return, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid. Each bank that transfers or presents an electronic collection item would make the warranties to the transferee bank, any subsequent collecting bank, the paying bank, and the drawer. Each bank that transfers an electronic return would make the warranties to the transferee returning bank, any subsequent returning bank, the depositary bank, and the owner of the check.

These warranties are similar to the warranty that the transferor of a substitute check or paper or electronic representation of a substitute check makes under the terms of the Check 21 Act and § 229.52 of Regulation CC. These warranties would, for example, protect a bank that may need to create a substitute check from an electronic collection item or electronic return that it receives. The proposed warranties would not apply to electronic items transferred or presented pursuant to an agreement that does not require the items to include an image of the check, because such items would not purport to meet the proposed definition of an electronic collection item or electronic return and the receiving bank would not expect to be able create a legally equivalent substitute check from the item.

2. Current § 229.34(b)—Warranty of Notice of Nonpayment

Because the Board proposes to delete the regulation's provision for notice of nonpayment, the Board proposes to

delete the warranty applicable to such notice that is set forth in current § 229.34(b).

3. Proposed § 229.34(b)—Settlement Amount, Encoding, and Offset Warranties

The Board proposes that the encoding warranty in current § 229.34(c)(3) (proposed § 229.34(b)(3)) be extended to information encoded after issue as electronic information. For purposes of this paragraph, information encoded after issue includes any information in the electronic information of an electronic collection item or electronic return.

4. Proposed § 229.34(c)—Transfer and Presentment Warranties With Respect to a Remotely Created Check

Under current § 229.34(d), a bank that transfers or presents a remotely created check and receives settlement or consideration for it warrants that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The Board proposes to amend the commentary to proposed § 229.34(c) to clarify that under proposed § 229.34(e), the warranty would apply to an electronic image and information that purport to be derived from a remotely created check, even were they not in fact derived from a paper check. For example, a depositary bank transferring an electronic image and information that, upon inspection, appear to be derived from a check that meets the regulation's definition of remotely created check would make the warranty of authorization for a remotely created check even if no original check existed with respect to the transaction in question. Further, a paying bank receiving presentment of such an item would receive from the presenting bank a warranty that the item was authorized by the person on whose account the item is drawn.

Currently, a bank that transfers a remotely created check makes the current § 229.34(e) warranty to the transferee bank, any subsequent collecting bank, and the paying bank. The Board's proposed warranties with respect to electronic collection items (which could be derived from remotely created checks) extend to the drawer; similarly, the current notice of nonpayment and returned check warranties extend to the owner of the check. The Board requests comment on whether the remotely created check warranties should extend to the person on whose account the remotely created check is drawn.

5. Section 229.34(d)—Warranties With Respect to a Returned Check

Proposed § 229.34(d) contains the warranties set forth in current § 229.34(a). The Board proposes to delete from these warranties the warranty of return of a check within the deadline specified in Regulation J. The Regulation J warranties apply only to those returned checks subject to the terms of that regulation, and need not be specified in Regulation CC.

6. Section 229.34(e)—Electronic Image and Information Transferred as an Electronic Collection Item or Electronic Return

Under proposed § 229.34(e), a bank that transfers or presents an electronic image and related electronic information as if it were an electronic collection item or electronic return would make all the warranties in § 229.34 as if the image and information were an electronic collection item or electronic return. In turn, because electronic collection items and electronic returns would be treated as if they were checks or returned checks under § 229.33, a bank also would make the warranties in § 229.34 as if the images and related electronic information were checks or returned checks. This proposal protects recipients of these items that likely will not be able to distinguish them from similar items that originated as paper checks and therefore meet the definitions of "electronic collection item" and "electronic return."

In order for a substitute check to be the legal equivalent of the original check, the image and information contained in the substitute check must be of a paper check. Accordingly, the Board proposes definitions that require electronic collection items and electronic returns be derived from an item that existed as paper. In some cases, a bank may receive an electronic image and electronic information that looks like an electronic collection item or electronic return, but is neither, because it was originally created electronically and there was never a paper check. Banks that receive such images and related electronic information usually cannot differentiate them from actual electronic collection items or electronic returns. Nonetheless, a bank that unknowingly receives an electronic image and related electronic information not derived from a paper instrument may nonetheless transfer the image and related electronic information as if it were derived from a paper instrument. Therefore, the Board believes that electronic images and related electronic information transferred as electronic collection items or electronic returns should be subject to the same warranties as electronic collection items and electronic returns, and therefore, the same warranties as checks and returned checks (see proposed § 229.34(a)).

G. Section 229.35(a)—Indorsement Standards; Appendix D—Indorsement, Reconverting-Bank Identification, and Truncating-Bank Identification Standards

Section 229.35(a) requires a bank (other than the paying bank) that handles a check to indorse the check in a manner that permits a person to interpret the indorsement. Since implementation of the Check 21 Act, banks have increasingly complied with this requirement by associating their electronic indorsements with items that they handle electronically.

In appendix D, the Board proposes to require a depositary bank that transfers an electronic collection item to another bank to apply its indorsement to that item electronically in accordance with ANS X9.100–187, unless the parties otherwise agree.[74] Similarly, the Board also proposes to require a collecting bank that transfers an electronic collection item, or a returning bank that transfers an electronic return, to another bank to apply its indorsement electronically in accordance with ANS X9.100–187, unless the parties otherwise agree. In general, the Board believes that inclusion of banks' indorsements as addenda records accompanying electronic collection items and electronic returns will facilitate the automated handling of the items by subsequent banks. In particular, inclusion of the depositary bank's indorsement as an addenda record accompanying an electronic collection item will facilitate the automated routing of electronic returns by paying banks and returning banks.

H. Section 229.36—Presentment and Issuance of Checks

1. Section 229.36(a)—Receipt of Electronic Collection Items

i. Section 229.36(a)(1)

Proposed § 229.36(a)(1) sets forth two circumstances in which a paying bank is deemed to have agreed to accept an electronic collection item from the presenting bank. First, a paying bank may agree to accept the electronic

[74] This new requirement would not alter the flexibility provided by § 229.35(d) to a depositary bank to arrange with another bank to apply the other bank's indorsement as the depositary-bank indorsement.

collection item directly from the presenting bank. Second, a paying bank may have otherwise agreed with the presenting bank to accept an electronic collection item. The proposed commentary indicates that one example of such an agreement would be where the paying bank and presenting bank are both members of the same check clearing house, under the rules of which the paying bank has agreed to accept electronic collection items from the presenting bank.

ii. Section 229.36(a)(2)

Similar to proposed § 229.32(a)(2), proposed § 229.36(a)(2) sets forth when a bank is considered to receive an electronic collection item. A bank receives an electronic collection item when it is delivered to the electronic presentment point designated by the bank or, by agreement, otherwise is made available to the bank for retrieval or review. For example, if a paying bank designates an Internet protocol (IP) address as its electronic presentment point, the paying bank has received an electronic collection item when it is delivered to that address. In contrast, the paying bank may have an arrangement with the collecting bank whereby electronic collection items are received by the paying bank when the collecting bank makes the items available for the paying bank to retrieve or review from a storage device in accordance with the agreement between the collecting bank and the paying bank.

iii. Section 229.36(a)(3)

Similar to proposed § 229.32(a)(2), proposed § 229.36(a)(3) permits a paying bank, for ease of processing, to require that electronic collection items be separated from electronic returns.

2. Section 229.36(b)—Receipt of Paper Checks

The Board proposes in § 229.36(b)(2) that a paying bank be permitted to require that forward-collection checks be separated from returned checks. A similar provision in current § 229.36(f)(1) is limited to checks presented for same-day settlement and permits a paying bank to require that paper checks presented for same-day settlement be separated from other forward-collection checks or returned checks. The Board requests comment on whether a requirement that paper checks presented for same-day settlement be separated from other checks presentments remains necessary.

3. Section 229.36(d)—Same-Day Settlement

For the reasons discussed above in the overview of the proposal, the Board proposes in § 229.36(d)(2) to permit a paying bank to require that checks presented for same-day settlement be presented as electronic collection items to a designated electronic presentment point.

4. Section 229.36(e)—Issuance of Payable-Through Checks

Current § 229.36(e) requires a bank that arranges for checks payable by it to be payable through another bank to print conspicuously on the face of the check the name, location, and first four digits of the routing number of the bank by which the check is payable. The purpose of this provision is to alert the depositary bank receiving a check for deposit that it could not rely on the routing number in the MICR line of the check to determine whether the check was local or nonlocal. Because there are no longer any nonlocal checks, the Board believes that § 229.36(e) is no longer necessary and proposes to delete it.

I. Section 229.37—Variation by Agreement

The commentary to § 229.37 provides examples of situations where variation by agreement is permissible. The Board proposes to amend the commentary to § 229.37 to include as an example of permissible variation by agreement the situation where a depositary bank and a paying bank or returning bank agree to send electronic returns even where the item is available for return. Similarly, the Board proposes to amend the commentary by adding an example that permits a presenting bank and paying bank to agree that presentment takes place upon receipt of an electronic collection item.

J. Section 229.38—Liability

Section 229.38(d)(2) makes drawee banks liable to the extent they issue payable-through checks that are payable through a bank located in a different check-processing region and that circumstance causes a delay in return. Because there is now only one check-processing region, this liability provision is obsolete and the Board proposes to delete it.

K. Section 229.40—Mergers

The Board proposes to delete as obsolete the provision in § 229.40(b) regarding mergers consummated on or after July 1, 1998, and before March 1, 2000.

L. Section 229.43—Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

The Board proposes to modify § 229.43 to reflect how the proposed warranties for electronic collection items and electronic returns in § 229.34 would apply to checks payable in Guam, American Samoa, and the Northern Mariana Islands. Specifically, a bank that handles Pacific island checks in the same manner as other checks may transfer electronic images and electronic information as electronic collection items or electronic returns derived from Pacific island checks. Accordingly, such a bank would make the warranties in §§ 229.34(a) and (b) with respect to Pacific island checks.

IV. Subpart D

A. Section 229.52—Substitute-Check Warranties

Sometimes a check submitted for deposit is subsequently "rejected" by the bank that receives the check. For example, a bank's customer might submit a check at an ATM that captures an image of the check and sends the image electronically to the bank. In turn, the bank may provide provisional credit to the customer and review the item. For various reasons, the bank's review of the item might result in the item being rejected—for example, the bank might determine that the item is not payable to the customer who submitted it for deposit. It is costly for the bank to obtain the check from the ATM to provide it back to the customer; moreover, the check may have been destroyed. Accordingly, banks sometimes provide the rejected item to the customer in the form of a substitute check. In such a scenario, the bank would be both the reconverting bank (the bank that created the substitute check) and the truncating bank (the bank that truncated the original check).

Under the terms of § 229.52(a), a bank makes the Check 21 Act warranties with respect to a substitute check when it transfers the substitute check for consideration, as the terms "transfer" and "consideration" are defined in current § 229.2(ccc) (proposed to be redesignated as § 229.2(tt)). However, a bank may not have received consideration for a substitute check it provides to its customer after it has rejected an original check submitted for deposit.

As noted in the commentary to the definition of transfer and consideration, the Check 21 Act contemplates that a nonbank person that receives a substitute check from a bank will receive warranties and indemnities with

respect to that check. Therefore, in order to prevent a bank from being able to transfer a check that the bank truncated and then reconverted without providing the substitute-check warranties and indemnity, the Board proposes to add to § 229.52(a) a new subsection stating that a bank that rejects a check submitted for deposit and sends back to its customer a substitute check (or a paper or electronic representation of a substitute check) makes the warranties in § 229.52(a) regardless of whether it received consideration for the substitute check. Because the bank would make these warranties, the substitute check would be the legal equivalent of the rejected original check, provided that the substitute check meets the requirements for legal equivalence set forth in § 229.51(a).[75] If the substitute check does not meet the requirements for legal equivalence, then the substitute check recipient would have a Check 21 warranty claim against the bank.

Because the bank is both the truncating bank and the reconverting bank with respect to the check, the bank must identify itself on the front of the substitute check as the truncating bank and on the front and back of the check as the reconverting bank, in accordance with the terms of § 229.51(b). The bank is not, however, a depositary bank, collecting bank, or returning bank with respect to the check, and the Board proposes to add a clarifying statement to that effect in proposed § 229.2(r) (current § 229.2(o), the regulation's definition of depositary bank). Moreover, the bank's identification of itself on the back of the check as a reconverting bank does not constitute the bank's indorsement of the check. To address this latter point, the Board proposes changes to the commentaries to §§ 229.35(a) and 229.51(b), and to paragraph 3(ii) of appendix D.

The Board also proposes to modify the commentary to reflect the fact that a bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check makes the warranties in § 229.52.

B. Section 229.53—Substitute-Check Indemnity

In addition to imposing the substitute check warranties on a bank that rejects a check for deposit, the Board similarly proposes to add to § 229.53(a) a new subsection stating that a bank that rejects a check submitted for deposit and sends back to its customer a substitute check provides the indemnity set forth in § 229.53(a) regardless of whether the bank received consideration. The Board also proposes to modify the commentary to reflect the fact that a bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check is responsible for providing the indemnity in § 229.53.

Other Requests for Comment

I. Effective Date

The Board proposes that the revised subparts A and B take effect 30 days following publication of the final rule. The Board recognizes that some banks may wish to use the model forms soon after the rule becomes effective, as part of their normal reordering or reprinting cycle for their funds-availability disclosures. In order to minimize the compliance costs, the Board proposes that banks would have 12 months to comply with the amendments to subpart B and the model forms in appendix C.

The Board proposes that the amendments to subparts C and D become effective six months following publication of the final rule. As discussed above, these amendments provide, among other things, that a depositary bank must accept electronic returns in order to be entitled to expeditious return. The time required for depositary banks that currently accept paper returned checks to implement the operational changes necessary for receiving electronic returns generally should not be significant. Many of these depositary banks are small and receive a small number of returned checks. Accordingly, receiving returns as .pdfs, for example, should not require substantial changes. The Board does not expect that other changes to subpart C, such as the proposed provisions for electronic same-day settlement, would impose a significant transition burden given that almost all checks are already presented electronically. Further, under the proposal a collecting bank may continue to present paper checks under the terms of the UCC and Regulation J.

II. Potential Future Changes To Reduce Risks to Depositary Banks

Given that there are no longer any nonlocal checks, a depositary bank must make funds available to the depositor for withdrawal by the second business day after the banking day of deposit, unless one of the time-period adjustments in § 229.12 or one of the exceptions in § 229.13 is applicable. Even assuming that banks collect and return all checks electronically, depositary banks will in many cases nonetheless be required to make the funds represented by a check deposit available for withdrawal before learning whether the check has been returned unpaid. The Board therefore requests comment on whether this risk is significant and whether there are feasible means to help reduce any risk to depositary banks. For example, the deadline in the UCC by which a paying bank must initiate return of an unpaid check is generally midnight of the banking day following the banking day of receipt of the check by the paying bank, except as the deadline may be extended by § 229.30(c) of Regulation CC. As delivery of forward-collection and returned checks becomes increasingly electronic, this amount of time (typically about 36 hours) afforded to the paying bank takes up a substantial portion of the total time required for a check to be sent from the depositary bank to the paying bank and back again. The Board requests comment on whether it would be desirable to reduce the amount of time afforded to the paying bank to decide whether or not to pay a check that has been presented to it. The Board also requests comment on whether there are other, preferable, ways to reduce this risk to depositary banks.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rulemaking under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is proposed by this rulemaking is found in 12 CFR 229. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0235.

The EFA Act, as amended, and the Check 21 Act authorizes the Board to issue regulations to carry out the provisions of those Acts (12 U.S.C. 4008 and 12 U.S.C. 5014, respectively). Because the Federal Reserve does not collect any information, no issue of confidentiality arises. However, if, during a compliance examination of a financial institution, a violation or possible violation of the EFA Act or the Check 21 Act is noted then information regarding such violation may be kept

[75] These requirements are that the substitute check (1) accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and (2) bears the legend, "This is a legal copy of your check. You can use it the same way you would use the original check."

confidential pursuant to Section (b)(8) of the Freedom of Information Act. 5 U.S.C. 552(b)(8). This information collection is mandatory.

Regulation CC applies to all banks, not just State Member Banks (SMBs). However, under the PRA, the Board accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Federal Reserve. The Board accounts for the paperwork burden only for SMBs and uninsured state branches and agencies of foreign banks. Other Federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.

The current annual burden to comply with the provisions of Regulation CC is estimated to be 202,396 hours for the 1,060 institutions supervised by the Federal Reserve and that are deemed to be respondents for the purposes of the PRA.

As discussed above, the Board proposes to amend model disclosures, clauses, and notices, in appendix C that banks may use in disclosing their funds-availability policies to their customers and to update the preemption determinations in appendix F to incorporate content requirements prescribed by section 1086 of the Dodd-Frank Act.

The Board estimates that the proposed rule would impose a one-time increase in the total annual burden under Regulation CC. The 1,060 respondents would take, on average, 80 hours (two business weeks) to update their systems to comply with the proposed disclosure requirements addressed in 12 CFR part 229. This one-time revision would increase the burden by 84,800 hours. The Board estimates that, on a continuing basis, the revision to the rule would have a negligible effect on the annual burden. The total annual burden for the Regulation CC information collection is estimated to increase from 202,396 to 287,196 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0235), Washington, DC 20503.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, the Board is publishing an initial regulatory flexibility analysis for the proposed amendments to Regulation CC. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation. While the Board believes that the proposed rule likely would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)), the Board has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

The Board is proposing the foregoing amendments to Regulation CC pursuant to its authority under the EFA Act and the Check 21 Act. The proposed amendments would apply to all banks regardless of their size, and the Board anticipates that the proposal would reduce banks' overall costs of collecting and returning checks.

By providing that a depositary bank preserves its right to expeditious return only of it agrees to receive returned checks electronically, the proposed rule would encourage, but not require, depositary banks to accept check returns in electronic form. A depositary bank that currently receives returned checks in paper form and that chooses, as encouraged by the proposal, to begin to receive returned checks electronically, will incur some cost associated with that transition. The Board expects that these costs would be relatively low for a small depositary bank, which typically would receive only a small volume of returned checks. For example, as mentioned above, the Federal Reserve Banks now offer a product under which they deliver electronically to small depositary banks copies (.pdf files) of returned checks, which the banks can print on their own premises if necessary.[76] To receive returned checks in this fashion, a depositary bank may need to establish and maintain an electronic connection to the Reserve Banks, or another returning bank that offers a similar service, and to purchase certain equipment, such as a printer capable of double-sided printing and magnetic-ink toner cartridges. Depending on the volume of returned checks that a small depositary bank receives, the Board estimates that this transition would cost a small depositary bank approximately $5,000 in net-present-value terms.[77] Conversely, a small depositary bank that does not choose to accept returned checks electronically would, under the proposal, incur additional risk associated with that decision. Specifically, the bank would not retain its right to expeditious return of a check, and a returned check may not be delivered to the bank in a timely fashion. While this risk is difficult to quantify, it is reasonable to expect that each small depositary bank will weigh the costs and benefits of whether to accept returns electronically. If the bank determines that the net present value of the risk is greater than the cost to receive returned checks electronically, then the bank can minimize its cost associated with the Board's proposal by accepting returned checks electronically.

The proposed updates to the model funds-availability policy disclosures and notices in appendix C should not impose significant cost on small banks. Under the proposal, a bank that bases its disclosures and notices on the current models in the appendix will continue to receive a safe harbor for 12 months after the final rule becomes effective, provided that the bank's disclosures and notices accurately reflect the bank's policies and practices. Moreover, a bank that chooses to update its disclosures on the basis of the proposal would not generally need to redeliver disclosures to all of its existing customers if the bank's underlying funds-availability

[76] After printing the .pdf files, the depositary bank would be able to process the checks exactly as it would process paper checks physically delivered to it.

[77] This estimate takes into account the cost to a small depositary bank to establish and maintain an electronic connection to the Reserve Banks, which is estimated to be $110 per month. *See* 75 FR 67731 at 67747 (Nov. 3, 2010). Some small banks, however, may already have such a connection. Further, a small depositary bank may choose to receive its returns electronically in a manner that does not require this connection, such as through a different returning bank, an electronic check clearinghouse, or a nonbank processor.

policies did not change; instead, in accordance with the regulation, a bank would need to provide the disclosures at the time a customer opens an account, and upon request.

Any costs to a small bank that may result from the rule will be offset to some extent by savings to the bank in other areas. For example, receiving returned checks electronically may enable a small bank to reduce its ongoing operating costs associated with receiving and processing returned checks. Further, as other banks with which the small bank does business also begin to receive returned checks electronically, the small bank, in its role as paying bank, may experience lower costs associated with sending returned checks to other banks, because a paying bank typically pays a higher fee to deliver a returned check in paper form to a depositary bank, as compared to delivering a returned check electronically to the depositary bank. In addition, the proposed provisions for electronic same-day settlement may reduce a small bank's costs associated with receiving check presentments, because it should further reduce the number of paper check presentments that it receives.

According to the Small Business Administration size standards defining small entities, a commercial bank, savings association, or credit union is considered a "small entity" if it has assets of $175 million or less.[78] The Board can identify through data from Reports of Condition and Income ("call reports") the approximate number of small depository institutions that would be subject to the proposed rule if finalized.[79] Based on September 2010 call report data, there are approximately 11,030 depository institutions that have total domestic assets of $175 million or less and thus are considered small entities for purposes of the RFA. Based on December 2010 data regarding checks returned through the Reserve Banks, the Board estimates that 41 percent of small depository institutions had at that time made arrangements to receive returned checks electronically, whereas 59 percent had not. Banks are steadily adopting electronic check handling methods, however, and the Board expects that a substantially higher percentage of small depository institutions will have made arrangements to receive electronic check returns by the time the Board adopts a final rule. The Board specifically requests comment on the cost of its proposed rule to a small depository institution.

The Board notes that subpart A of Regulation J overlaps with the proposed rule with respect to checks collected or returned through the Reserve Banks. The provisions of Regulation J supersede any inconsistent provisions of Regulation CC, but only to the extent of the inconsistency.[80]

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation and commentary. With the exception of appendices C and F to the regulation, new language is shown inside ►bold-faced arrows◄, while language proposed to be deleted is set off with ❚bold-faced brackets❚. In appendix C, each proposed new model form is set forth in its entirety and the corresponding current form is deleted in its entirety, because the convention described above for the changes to the text within each of the forms would render illegible the formatting of the proposed forms. The Board proposes to replace the text of appendix F in its entirety. Paragraphs in the commentary are numbered to comply with **Federal Register** publication rules.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 229 as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTIONS OF CHECKS (REGULATION CC)

Subpart A—General

1. Section 229.1 is revised to read as follows:

§ 229.1 Authority and purpose; organization.

(a) *Authority and purpose.* This part is issued by the Board of Governors of the Federal Reserve System (Board) to implement the Expedited Funds Availability Act (12 U.S.C. 4001–4010) (the EFA Act) and the Check Clearing for the 21st Century Act (12 U.S.C. 5001–5018) (the Check 21 Act).

(b) *Organization.* This part is divided into subparts and appendices as follows—

(1) Subpart A contains general information. It sets forth—

(i) The authority, purpose, and organization;

(ii) Definition of terms; and

(iii) Authority for administrative enforcement of this part's provisions.

(2) Subpart B of this part contains rules regarding the duty of banks to make funds deposited into accounts available for withdrawal, including availability schedules. Subpart B of this part also contains rules regarding exceptions to the schedules, disclosure of funds availability policies, payment of interest, liability of banks for failure to comply with Subpart B of this part, and other matters.

(3) Subpart C of this part contains rules to expedite the collection and return of checks by banks►, including provisions that accommodate electronic presentment and return of checks◄. These rules cover the direct return of checks, the manner in which the paying bank and returning banks must return checks to the depositary bank, ❚notification of nonpayment by the paying bank,❚ indorsement and presentment of checks, same-day settlement for certain checks, the liability of banks for failure to comply with subpart C of this part, and other matters.

(4) Subpart D of this part contains rules relating to substitute checks. These rules address the creation and legal status of substitute checks; the substitute check warranties and indemnity; expedited recredit procedures for resolving improper charges and warranty claims associated with substitute checks provided to consumers; and the disclosure and notices that banks must provide.

►(5) Appendix A of this part contains a routing number guide to next-day-availability checks. The guide lists the routing numbers of checks drawn on Federal Reserve Banks and Federal Home Loan Banks, and U.S. Treasury checks and Postal money orders that are subject to next-day availability.

(6) Appendix C of this part contains model funds-availability policy disclosures, clauses, and notices and a model disclosure and notices related to substitute-check policies.

(7) Appendix D of this part contains indorsement standards and standards for identifying the reconverting bank and truncating bank.

(8) Appendix E of this part contains Board interpretations, which are labeled "Commentary," of the provisions of this

[78] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[79] The proposed rule would not impose costs on any small entities other than depository institutions.

[80] *See* 12 CFR 210.3(f).

part. The Commentary provides background material to explain the Board's intent in adopting a particular part of the regulation and provides examples to aid in understanding how a particular requirement is to work. The Commentary is an official Board interpretation under section 611(e) of the EFA Act (12 U.S.C. 4010(e)).

(9) Appendix F of this part contains the Board's determinations of the EFA Act and Regulation CC's preemption of state laws that were in effect on September 1, 1989.◄

2. Section 229.2 is revised to read as follows:

§ 229.2 Definitions.

As used in this part, and unless the context requires otherwise, the following terms have the meanings set forth in this section, and the terms not defined in this section have the meanings set forth in the Uniform Commercial Code:

(a) *Account.* (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, *account* means a deposit as defined in 12 CFR 204.2(a)(1)(i) that is a transaction account as described in 12 CFR 204.2(e). As defined in these sections, *account* generally includes ►an◄ account[s] at a bank from which the account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, electronic payment, or other similar means for the purpose of making payments or transfers to third persons or others. *Account* also includes ►an◄ account[s] at a bank from which the account holder may make third party payments at an ATM, remote service unit, or other electronic device, including by debit card, but the term does not include ►a◄ savings deposit[s]or account[s] described in 12 CFR 204.2(d)(2) even though such accounts permit third party transfers. An account may be in the form of—

(i) A demand deposit account,

(ii) A negotiable order of withdrawal account,

(iii) A share draft account,

(iv) An automatic transfer account, or

(v) Any other transaction account described in 12 CFR 204.2(e).

(2) For purposes of subpart B of this part and, in connection therewith, this subpart A, *account* does not include an account where the account holder is a bank, where the account holder is an office of an institution described in paragraphs (e)(1) through (e)(6) of this section or an office of a "foreign bank" as defined in section 1(b) of the International Banking Act (12 U.S.C. 3101) that is located outside the United States, or where the direct or indirect account holder is the Treasury of the United States.

(3) For purposes of subpart D of this part and, in connection therewith, this subpart A, *account* means any deposit, as defined in 12 CFR 204.2(a)(1)(i), at a bank, including a demand deposit or other transaction account and a savings deposit or other time deposit, as those terms are defined in 12 CFR 204.2.

(b) [*Automated clearinghouse* or *ACH* means a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on automated clearinghouse items or under rules of an automated clearinghouse association.] ►*Automated clearinghouse (ACH) credit transfer* means a transfer whereby the originator orders that its account be debited and another account be credited through the ACH, which is a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on ACH items or under rules of an ACH association or similar interbank agreement.◄

(c) *Automated teller machine* or *ATM* means an electronic device at which a natural person may make deposits to an account by cash or ►paper◄ check and perform other account transactions►, for example, making cash withdrawals from an account.◄

(d) *Available for withdrawal* with respect to funds deposited means available for all uses generally permitted to the customer for actually and finally collected funds under the bank's account agreement or policies, such as for payment of checks drawn on the account, certification of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

(e)►(1)◄ *Bank* means—

[(1)]►(i)◄ An *insured bank* as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or a bank that is eligible to apply to become an insured bank under section 5 of that Act (12 U.S.C. 1815);

[(2)]►(ii)◄ A *mutual savings* bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

[(3)]►(iii)◄ A *savings bank* as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

[(4)]►(iv)◄ An *insured credit union* as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or a credit union that is eligible to make application to become an insured credit union under section 201 of that Act (12 U.S.C. 1781);

[(5)]►(v)◄ A *member* as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422);

[(6)]►(vi)◄ A *savings association* as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) that is an insured depository institution as defined in section 3 of that Act (12 U.S.C. 1813(c)(2)) or that is eligible to apply to become an insured depository institution under section 5 of that Act (12 U.S.C. 1815); or

[(7)]►(vii)◄ An *agency* or a *branch* of a *foreign bank* as defined in section l(b) of the International Banking Act (12 U.S.C. 3101).

►(2)◄ For purposes of subparts C and D of this part and, in connection therewith, this subpart A, the term *bank* also includes any person engaged in the business of banking, as well as a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank. Unless otherwise specified, the term *bank* includes all of a bank's offices in the United States, but not offices located outside the United States.

[Note:] ►(3)◄ For purposes of subpart D of this part and, in connection therewith, this subpart A, *bank* also includes the Treasury of the United States or the United States Postal Service to the extent that the Treasury or the Postal Service acts as a paying bank.

(f) *Banking day* means that part of any business day on which an office of a bank is open to the public for carrying on substantially all of its banking functions.

(g) *Business day* means a calendar day other than a Saturday or a Sunday, January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, or December 25. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is not a business day.

(h) *Cash* means United States coins and currency.

(i) *Cashier's check* means a check that is—

(1) Drawn on a bank;

(2) Signed by an officer or employee of the bank on behalf of the bank as drawer;

(3) A direct obligation of the bank; and

(4) Provided to a customer of the bank or acquired from the bank for remittance purposes.

(j) *Certified check* means a check with respect to which the drawee bank

certifies by signature on the check of an officer or other authorized employee of the bank that—

(1) (i) The signature of the drawer on the check is genuine; and

(ii) The bank has set aside funds that—

(A) Are equal to the amount of the check, and

(B) Will be used to pay the check; or

(2) The bank will pay the check upon presentment.

(k)►(1)◄ *Check* means—

【(1)】►(i)◄ A negotiable demand draft drawn on or payable through or at an office of a bank;

【(2)】►(ii)◄ A negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;

【(3)】►(iii)◄ A negotiable demand draft drawn on the Treasury of the United States;

【(4)】►(iv)◄ A demand draft drawn on a state government or unit of general local government that is not payable through or at a bank;

【(5)】►(v)◄ A United States Postal Service money order; or

【(6)】►(vi)◄ A traveler's check drawn on or payable through or at a bank.

【(7)】►(2)◄ The term check includes an original check and a substitute check.

►(3)◄ The term *check* does not include a noncash item or an item payable in a medium other than United States money.

►(4)◄ A draft may be a *check* even though it is described on its face by another term, such as *money order.*

►(5)◄ For purposes of subparts C and D, and in connection therewith, subpart A, of this part, the term *check* also includes a demand draft of the type described above that is nonnegotiable.

(l) 【[Reserved]】 ►*Claimant bank* means a bank that submits a claim for a recredit for a substitute check to an indemnifying bank under § 229.55.◄

(m) 【*Check processing region* means the geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities.】 *Collecting bank* means any bank handling a check for forward collection, except the paying bank.

(n) *Consumer* means a natural person who—

(1) With respect to a check handled for forward collection, draws the check on a consumer account; or

(2) With respect to a check handled for return, deposits the check into or cashes the check against a consumer account.

(o) *Consumer account* means any account used primarily for personal, family, or household purposes.

(p) *Contractual branch,* with respect to a bank, means a branch of another bank that accepts a deposit on behalf of the first bank.

(q) *Customer* means a person having an account with a bank.

(r) 【*Local check* means a check payable by or at a local paying bank, or a check payable by a nonbank payor and payable through a local paying bank.】 *Depositary bank* means the first bank to which a check is transferred even though it is also the paying bank or the payee. A check deposited in an account is deemed to be transferred to the bank holding the account into which the check is deposited, even though the check is physically received and indorsed first by another bank. ►A bank that rejects a check submitted for deposit is not a depositary bank with respect to that check.◄

(s) 【*Local paying bank* means a paying bank that is located in the same check processing region as the physical location of the branch, contractual branch, or proprietary ATM of the depositary bank in which that check was deposited.】 ►*Electronic collection item* means an electronic image of and information related to a check that a bank sends for forward collection and that—

(1) A paying bank has agreed to receive under § 229.36(a);

(2) Is sufficient to create a substitute check; and

(3) Conforms with American National Standard Specifications for Electronic Exchange of Check and Image Data—X9.100–187, in conjunction with its Universal Companion Document (hereinafter collectively referred to as ANS X9.100–187), unless the Board by rule or order determines that different standard applies or the parties otherwise agree.◄

(t) *Electronic payment* means a wire transfer or an ACH credit transfer.

(u) ►*Electronic presentment point* means the electronic location that a paying bank has designated for receiving electronic collection items.◄

(v) 【*Nonlocal check* means a check payable by, through, or at a nonlocal paying bank.】 ►*Electronic return* means an electronic image of and information related to a check that a paying bank determines not to pay and that—

(1) A depositary bank has agreed to receive under § 229.32(a);

(2) Is sufficient to create a substitute check; and

(3) Conforms with ANS X9.100–187, unless the Board by rule or order determines that a different standard applies or the parties otherwise agree.◄

(w) 【*Nonlocal paying bank* means a paying bank that is not a local paying bank with respect to the depositary bank.】 ►*Electronic return point* means the electronic location that the depositary bank has designated for receiving electronic returns.◄

(x) *Fedwire* has the same meaning as that set forth in § 210.26(e) of this chapter.

(y) *Forward collection* means the process by which a bank sends a check on a cash basis to a collecting bank for settlement or to the paying bank for payment.

(z) *Good faith* means honesty in fact and observance of reasonable commercial standards of fair dealing.

(aa) *Indemnifying bank* means a bank that provides an indemnity under § 229.53 with respect to a substitute check.

(bb) *Interest compensation* means an amount of money calculated at the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest compensation is payable, divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the last preceding day for which there is a published rate.

(cc) *Magnetic ink character recognition line* and *MICR line* mean the numbers, which may include the routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (hereinafter ANS X9.13) for an original check and American National Standard Specifications for an Image Replacement Document—IRD, X9.100–140 (hereinafter ANS X9.100–140) for a substitute check (unless the Board by rule or order determines that different standards apply).

(dd) *Merger transaction* means—

(1) A merger or consolidation of two or more banks; or

(2) The transfer of substantially all of the assets of one or more banks or branches to another bank in consideration of the assumption by the acquiring bank of substantially all of the liabilities of the transferring banks, including the deposit liabilities.

(ee) 【*Similarly situated bank* means a bank of similar size, located in the same community, and with similar check handling activities as the paying bank or returning bank.】 *Noncash item* means an item that would otherwise be a check, except that—

(1) A passbook, certificate, or other document is attached;

(2) It is accompanied by special instructions, such as a request for special advice of payment or dishonor;

(3) It consists of more than a single thickness of paper, except a check that qualifies for handling by automated check processing equipment; or

(4) It has not been preprinted or post-encoded in magnetic ink with the routing number of the paying bank.

(ff) *Nonproprietary ATM* means an ATM that is not a proprietary ATM.

(gg) *Original check* means the first paper check issued with respect to a particular payment transaction.

(hh) *Paper or electronic representation of a substitute check* means any copy of or information related to a substitute check that a bank handles for forward collection or return, charges to a customer's account, or provides to a person as a record of a check payment made by the person.

(ii)►(1)◄ *Paying bank* means—

[(1)]►(i)◄ The bank by which a check is payable, unless the check is payable at another bank and is sent to the other bank for payment or collection;

[(2)]►(ii)◄ The bank at which a check is payable and to which it is sent for payment or collection;

[(3)] ►(iii)◄ The Federal Reserve Bank or Federal Home Loan Bank by which a check is payable;

[(4)]►(iv)◄ The bank through which a check is payable and to which it is sent for payment or collection, if the check is not payable by a bank; or

[(5)]►(v)◄ The state or unit of general local government on which a check is drawn and to which it is sent for payment or collection.

►(2)◄ For purposes of subparts C and D, and in connection therewith, subpart A, *paying bank* includes the bank through which a check is payable and to which the check is sent for payment or collection, regardless of whether the check is payable by another bank, and the bank whose routing number appears on a check in fractional or magnetic form and to which the check is sent for payment or collection.

[Note:] ►(3)◄ For purposes of subpart D of this part and, in connection therewith, this subpart A, *paying bank* also includes the Treasury of the United States or the United States Postal Service for a check that is payable by that entity and that is sent to that entity for payment or collection.

(jj) *Person* means a natural person, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization.

(kk) *Proprietary ATM* means an ATM that is ►(1)◄ —

[(1)]►(i)◄ Owned or operated by, or operated exclusively for, the depositary bank;

[(2)]►(ii)◄ Located on the premises (including the outside wall) of the depositary bank; or

[(3)]►(iii)◄ Located within 50 feet of the premises of the depositary bank, and not identified as being owned or operated by another entity.

►(2)◄ If more than one bank meets the owned or operated criterion of paragraph [(aa)]►(kk)◄(1) of this section, the ATM is considered proprietary to the bank that operates it.

(ll) *Qualified returned check* means a returned check that is prepared for automated return to the depositary bank by placing the check in a carrier envelope or placing a strip on the check and encoding the strip or envelope in magnetic ink. A qualified returned check need not contain other elements of a check drawn on the depositary bank, such as the name of the depositary bank.

(mm) *Reconverting bank* means—

(1) The bank that creates a substitute check; or

(2) With respect to a substitute check that was created by a person that is not a bank, the first bank that transfers, presents, or returns that substitute check or, in lieu thereof, the first paper or electronic representation of that substitute check.

(nn) *Remotely created check* means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. For purposes of this definition, "account" means an account as defined in paragraph (a) of this section as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

(oo) *Returning bank* means a bank (other than the paying or depositary bank) handling a returned check or notice in lieu of return. A returning bank is also a collecting bank for purposes of UCC 4–202(b).

(pp) *Routing number* means—

(1) The ►bank-identification◄ number printed on the face of a check in fractional form or in nine-digit form; [or]

(2) The ►bank-identification◄ number in a bank's indorsement in fractional or nine-digit form[.]►; or

(3) In the case of an electronic collection item or electronic return, the bank-identification number contained in the electronic image of or information related to a check.◄

(qq) State means a state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands. For purposes of subpart D of this part and, in connection therewith, this subpart A, state also means Guam, American Samoa, [the Trust Territory of the Pacific Islands,] the Northern Mariana Islands, and any other territory of the United States.

(rr) *Substitute check* means a paper reproduction of an original check that—

(1) Contains an image of the front and back of the original check;

(2) Bears a MICR line that, except as provided under ANS X9.100–140 (unless the Board by rule or order determines that a different standard applies), contains all the information appearing on the MICR line of the original check at the time that the original check was issued and any additional information that was encoded on the original check's MICR line before an image of the original check was captured;

(3) Conforms in paper stock, dimension, and otherwise with ANS X9.100–140 (unless the Board by rule or order determines that a different standard applies); and

(4) Is suitable for automated processing in the same manner as the original check.

(ss) *Sufficient copy and copy.* (1) A *sufficient copy* is a copy of an original check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or is otherwise sufficient to determine whether or not a claim is valid.

(2) A *copy* of an original check means any paper reproduction of an original check, including a paper printout of an electronic image of the original check, a photocopy of the original check, or a substitute check.

(tt) *Teller's check* means a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

(uu) *Transfer and consideration.* The terms *transfer* and *consideration* have the meanings set forth in the Uniform Commercial Code and in addition, for purposes of subpart D—

(1) The term *transfer* with respect to a substitute check or a paper or electronic representation of a substitute check means delivery of the substitute check or other representation of the substitute check by a bank to a person other than a bank; and

(2) A bank that transfers a substitute check or a paper or electronic representation of a substitute check directly to a person other than a bank has received *consideration* for the substitute check or other paper or

electronic representation of the substitute check if it has charged, or has the right to charge, the person's account or otherwise has received value for the original check, a substitute check, or a representation of the original check or substitute check.

(vv) *Traveler's check* means an instrument for the payment of money that—

(1) Is drawn on or payable through or at a bank;

(2) Is designated on its face by the term *traveler's check* or by any substantially similar term or is commonly known and marketed as a traveler's check by a corporation or bank that is an issuer of traveler's checks;

(3) Provides for a specimen signature of the purchaser to be completed at the time of purchase; and

(4) Provides for a countersignature of the purchaser to be completed at the time of negotiation.

(ww) *Truncate* means to remove an original check from the forward collection or return process and send to a recipient, in lieu of such original check, a substitute check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without the subsequent delivery of the original check.

(xx) *Truncating bank* means—

(1) The bank that truncates the original check; or

(2) If a person other than a bank truncates the original check, the first bank that transfers, presents, or returns, in lieu of such original check, a substitute check or, by agreement with the recipient, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without the subsequent delivery of the original check.

(yy) *Uniform Commercial Code, Code,* or *U.C.C.* means the Uniform Commercial Code as adopted in a state.

(zz) *United States* means the states, including the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

(aaa) *Unit of general local government* means any city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special purpose units of government, such as school districts or water districts.

(bbb) *Wire transfer* means an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted by electronic or other means through Fedwire, the Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. *Wire transfer* does not include an electronic fund transfer as defined in section 903(6) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(6)).

3. In § 229.3, paragraph (a) is revised as follows:

§ 229.3 Administrative enforcement.

(a) *Enforcement agencies.* Compliance with this part is enforced under—

(1) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 *et seq.*) in the case of—

(i) National banks, Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) Section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) The Federal Credit Union Act (12 U.S.C. 1751 *et seq.*) by the National Credit Union Administration Board with respect to any Federal credit union or credit union insured by the National Credit Union Share Insurance Fund.

►(4)◄The terms used in paragraph (a)(1) of this section that are not defined in this part or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

Subpart B—Availability of Funds and Disclosure of Funds Availability Policies

4. In § 229.10, revise paragraphs (b) and (c) as follows:

§ 229.10 Next-Day availability.

* * * * *

(b) *Electronic payments*—(1) *In general.* A bank shall make funds received for deposit in an account by an electronic payment available for withdrawal not later than the business day after the banking day on which the bank received the electronic payment.

(2) *When an electronic payment is received.* An electronic payment is received when the bank receiving the payment has received both—

(i) Payment in actually and finally collected funds; and

(ii) Information on the account and amount to be credited.

►(3) *Extent of payment received.*◄ A bank receives an electronic payment only to the extent that the bank has received payment in actually and finally collected funds.

(c) *Certain check deposits*—(1) [*General rule*]►*In general*◄. A depositary bank shall make funds deposited in an account by check available for withdrawal not later than the business day after the banking day on which the funds are deposited, in the case of—

(i) A check drawn on the Treasury of the United States and deposited in an account held by a payee of the check;

(ii) A U.S. Postal Service money order deposited—

(A) In an account held by a payee of the money order; and

(B) In person to an employee of the depositary bank.

(iii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank and deposited—

(A) In an account held by a payee of the check; and

(B) In person to an employee of the depositary bank;

(iv) A check drawn by a state or a unit of general local government and deposited—

(A) In an account held by a payee of the check;

(B) In a depositary bank located in the state that issued the check, or the same state as the unit of general local government that issued the check;

(C) In person to an employee of the depositary bank; and

(D) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depositary bank under paragraph (c)[(3)]►(2)◄ of this section.

(v) A cashier's, certified, or teller's check deposited—

(A) In an account held by a payee of the check;

(B) In person to an employee of the depositary bank; and

(C) With a special deposit slip or deposit envelope, if such slip or envelope is required by the depositary bank under paragraph (c)[(3)]►(2)◄ of this section.

(vi) A check deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank [if both branches are located in the same state or the same check processing region]; and,

(vii) The lesser of—

(A) $100, or

(B) The aggregate amount deposited on any one banking day to all accounts of the customer by check or checks not subject to next-day availability under paragraphs (c)(1)(i) through (vi) of this section.

[(2) *Checks not deposited in person.* A depositary bank shall make funds deposited in an account by check or checks available for withdrawal not later than the second business day after the banking day on which funds are deposited, in the case of a check deposit described in and that meets the requirements of paragraphs (c)(1)(ii), (iii), (iv), and (v), of this section, except that it is not deposited in person to an employee of the depositary bank.**]**

[(3)**]**►(2)◄ *Special deposit slip.* (i) As a condition to making the funds available for withdrawal in accordance with this section, a depositary bank may require that a state or local government check or a cashier's, certified, or teller's check be deposited with a special deposit slip or deposit envelope that identifies the type of check.

(ii) If a depositary bank requires the use of a special deposit slip or deposit envelope, the bank must either provide the special deposit slip or deposit envelope to its customers or inform its customers how the slip or envelope may be prepared or obtained and make the slip or envelope reasonably available.

5. Section 229.12 is revised to read as follows:

§ 229.12 Availability schedule.

[(a) *Effective date.* The availability schedule contained in this section is effective September 1, 1990.**]**

[(b) *Local checks and certain other checks***]**►(a) *In general*◄. Except as provided in ►§ 229.10(c),◄ paragraphs ►(b), (c), and◄ (d)**[**, (e), and (f)**]** of this section, ►and in § 229.13,◄ a depository bank shall make funds deposited in an account by a check available for withdrawal not later than the second business day following the banking day on which funds are deposited.◄**[**, in the case of—**]**

[(1) A local check;

(2) A check drawn on the Treasury of the United States that is not governed by the availability requirements of § 229.10(c);

(3) A U.S. Postal Service money order that is not governed by the availability requirements of § 229.10(c); and

(4) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to in this paragraph (b)(4) is a local check that is not governed by the availability requirements of § 229.10(c).**]**

[(c) *Nonlocal checks*—(1) *In general.* Except as provided in paragraphs (d), (e), and (f) of this section, a depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day on which funds are deposited, in the case of—

(i) A nonlocal check; and

(ii) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; a cashier's, certified, or teller's check; or a check deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank, if any check referred to in this paragraph (c)(1)(ii) is a nonlocal check that is not governed by the availability requirements of § 229.10(c).

(2) Nonlocal checks specified in appendix B–2 to this part must be made available for withdrawal not later than the times prescribed in that appendix.**]**

[(d)**]**►(b)◄ *Time period adjustment for withdrawal by cash or similar means.* A depositary bank may extend by one business day the time that funds deposited in an account by one or more checks subject to paragraphs **[**(b), (c), or (f)**]** ►(a) or (d)◄of this section are available for withdrawal by cash or similar means. Similar means include electronic payment, issuance of a cashier's or teller's check, **[**or**]** certification of a check, or other irrevocable commitment to pay, but do not include the granting of credit to a bank, a Federal Reserve Bank, or a Federal Home Loan Bank that presents a check to the depositary bank for payment. A depositary bank shall, however, make $400 of these funds available for withdrawal by cash or similar means not later than 5 p.m. on the business day on which the funds are available under paragraph**[**s (b), (c), or (f)**]** ►(a) or (d)◄ of this section. This $400 is in addition to the $100 available under § 229.10(c)(1)(vii).

[(e)**]**►(c)◄ *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.* The depositary bank may extend the time periods set forth in this section by one business day in the case of any deposit, other than a deposit described in § 229.10, that is—

(1) Deposited in an account at a branch of a depositary bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands; and

(2) Deposited by a check drawn on or payable at or through a paying bank not located in the same state as the depositary bank.

[(f)**]**►(d)◄ *Deposits at nonproprietary ATMs.* A depositary bank shall make funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the **[**fifth**]** ►fourth◄ business day following the banking day on which the funds are deposited.

6. Section 229.13 is revised as follows:

§ 229.13 Exceptions.

(a) *New accounts.* For purposes of this paragraph, checks subject to § 229.10(c)(1)(v) include traveler's checks.

(1) A deposit in a new account—

(i) Is subject to the requirements of § 229.10(a) and (b) to make funds from deposits by cash and electronic payments available for withdrawal on the business day following the banking day of deposit or receipt;

(ii) Is subject to the requirements of § 229.10(c)(1)(i) through (v) **[**and § 229.10(c)(2)**]** only with respect to the first $5,000 of funds deposited on any one banking day; but the amount of the deposit in excess of $5,000 shall be available for withdrawal not later than the ninth business day following the banking day on which funds are deposited; and

(iii) Is not subject to the availability requirements of §§ 229.10(c)(1)(vi) and (vii) and 229.12.

(2) An account is considered a new account during the first 30 calendar days after the account is established. An account is not considered a new account if each customer on the account has had, within 30 calendar days before the account is established, another account at the depositary bank for at least 30 calendar days.

(b) *Large deposits.* Sections 229.10(c) and 229.12 do not apply to the aggregate amount of deposits by one or more checks to the extent that the aggregate amount is in excess of $5,000 on any one banking day. For customers that have multiple accounts at a depositary bank, the bank may apply this exception to the aggregate deposits to all accounts held by the customer, even if the customer is not the sole holder of the accounts and not all of the holders of the accounts are the same.

(c) *Redeposited checks.* Sections 229.10(c) and 229.12 do not apply to a

check that has been returned unpaid and redeposited by the customer or the depositary bank. This exception does not apply—

(1) To a check that has been returned due to a missing indorsement and redeposited after the missing indorsement has been obtained, if the reason for return indication on the check states that it was returned due to a missing indorsement; or

(2) To a check that has been returned because it was post dated, if the reason for return indicated on the check states that it was returned because it was post dated, and if the check is no longer post dated when redeposited.

(d) *Repeated overdrafts.* ►(1)◄ If any account or combination of accounts of a depositary bank's customer has been repeatedly overdrawn, then for a period of six months after the last such overdraft, §§ 229.10(c) and 229.12 do not apply to any of the accounts.

►(2)◄ A depositary bank may consider a customer's account to be repeatedly overdrawn if—

[(1)]►(i)◄ On six or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative if checks or other charges to the account had been paid; or

[(2)]►(ii)◄ On two or more banking days within the preceding six months, the account balance is negative, or the account balance would have become negative, in the amount of $5,000 or more, if checks or other charges to the account had been paid.

►(iii) For purposes of this paragraph (d)(2), such other charges to the account shall not include attempted charges initiated by debit card that the depositary bank declines to authorize.◄

(e) *Reasonable cause to doubt collectibility*—(1) *In general.* Sections 229.10(c) and 229.12 do not apply to a check deposited in an account at a depositary bank if the depositary bank has reasonable cause to believe that the check is uncollectible from the paying bank. Reasonable cause to believe a check is uncollectible requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. Such belief shall not be based on the fact that the check is of a particular class or is deposited by a particular class of persons. The reason for the bank's belief that the check is uncollectible shall be included in the notice required under paragraph (g) of this section.

(2) *Overdraft and returned check fees.* ►(i)◄ A depositary bank that extends the time when funds will be available for withdrawal as described in paragraph (e)(1) of this section, and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks of other debits to the account, if—

[(i)]►(A)◄ The overdraft or return of the check would not have occurred except for the fact that the deposited funds were delayed under paragraph (e)(1) of this section; and

[(ii)]►(B)◄ The deposited check was paid by the paying bank.

►(ii)◄ Notwithstanding the foregoing, the depositary bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice of exception required in paragraph (g) of this section and, when required, refunds any such fees upon the request of the customer. The notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the exception is paid and how to obtain a refund.

(f) *Emergency conditions.* Sections 229.10(c) and 229.12 do not apply to funds deposited by check in a depositary bank►, if the depositary bank exercises such diligence as the circumstances require,◄ in the case of—

(1) An interruption of communications or computer or other equipment facilities;

(2) A suspension of payments by another bank;

(3) A war; or

(4) An emergency condition beyond the control of the depositary bank[, if the depositary bank exercises such diligence as the circumstances require].

(g) *Notice of exception*—(1) *In general.* Subject to paragraphs (g)(2) and (g)(3) of this section, when a depositary bank extends the time when funds will be available for withdrawal based on the application of an exception contained in paragraphs (b) through (e) of this section, it must provide the depositor with a written notice.

(i) The notice shall include the following information—

(A) A number or code, which need not exceed four digits, that identifies the customer's account;

(B) The date of the deposit;

►(C) The total amount of the deposit;◄

[(C)]►(D)◄ The amount of the deposit that is being delayed;

[(D)]►(E)◄ The reason the exception was invoked; and

[(E)]►(F)◄ The [time period within which]►day◄ the funds will be available for withdrawal.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not made in person to an employee of the depositary bank, or, if the facts upon which a determination to invoke one of the exceptions in paragraphs (b) through (e) of this section to delay a deposit only become known to the depositary bank after the time of the deposit. If the notice is not given at the time of the deposit, the depositary bank shall mail or deliver the notice to the customer as soon as practicable, but no later than the first business day following the day the facts become known to the depositary bank, or the deposit is made, whichever is later. ►If the customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer no later than the first business day following the day the facts become known to the depositary bank, or the deposit is made, whichever is later.◄

(2) *One-time exception notice.* ►(i)◄ In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depositary bank that extends the time when the funds deposited in a nonconsumer account will be available for withdrawal based on an exception contained in paragraph (b) or (c) of this section may provide a single notice to the customer that includes the following information—

[(i)]►(A)◄ The reason(s) the exception may be invoked; and

[(ii)]►(B)◄ The time period within which deposits subject to the exception generally will be available for withdrawal.

►(ii)◄ This one-time notice shall be provided only if each type of exception cited in the notice will be invoked for most check deposits in the account to which the exception could apply. This notice shall be provided at or prior to the time notice must be provided under paragraph (g)(1)(ii) of this section.

(3) *Notice of repeated overdrafts exception.* ►(i)◄ In lieu of providing notice pursuant to paragraph (g)(1) of this section, a depositary bank that extends the time when funds deposited in an account will be available for withdrawal based on the exception contained in paragraph (d) of this section may provide a notice to the customer for each time period during which the exception will be in effect. The notice shall include the following information—

[(i)]►(A)◄ [The account number of the customer]►A number or code, which need not exceed four digits, that identifies the customer's account◄;

[(ii)]►(B)◄ The fact that the availability of funds deposited in the customer's account will be delayed

because the repeated overdrafts exception will be invoked;

[(iii)]►(C)◄ The time period within which deposits subject to the exception generally will be available for withdrawal; and

[(iv)]►(D)◄ The time period during which the exception will apply.

►(ii)◄ This notice shall be provided at or prior to the time notice must be provided under paragraph (g)(1)(ii) of this section and only if the exception cited in the notice will be invoked for most check deposits in the account.

(4) *Emergency conditions exception notice.* When a depositary bank extends the time when funds will be available for withdrawal based on the application of the emergency conditions exception contained in paragraph (f) of this section, it must provide the depositor with notice in a reasonable form and within a reasonable time given the circumstances. The notice shall include the reason the exception was invoked and the time period within which funds shall be made available for withdrawal, unless the depositary bank, in good faith, does not know at the time the notice is given the duration of the emergency and, consequently, when the funds must be made available. The depositary bank is not required to provide a notice if the funds subject to the exception become available before the notice must be sent.

(5) *Record retention.* A depositary bank shall retain a record, in accordance with § 229.21(g), of each notice provided pursuant to its application of the reasonable►-◄cause exception under paragraph (e) of this section, together with a brief statement of the facts giving rise to the bank's reason to doubt the collectibility of the check.

(h) *Availability of deposits subject to exceptions.* (1) If an exception contained in paragraphs (b) through (f) of this section applies, the depositary bank may extend the time periods established under §§ 229.10(c) and 229.12 by a reasonable period of time.

(2) If a depositary bank invokes an exception contained in paragraphs (b) through (e) of this section with respect to a check described in § 229.10(c)(1) (i) through (v) [or § 229.10(c)(2)], it shall make the funds available for withdrawal not later than a reasonable period after the day the funds would have been required to be made available had the check been subject to ►§ ◄229.12.

(3) If a depositary bank invokes an exception under paragraph (f) of this section based on an emergency condition, the depositary bank shall make the funds available for withdrawal not later than a reasonable period after the emergency has ceased or the period established in §§ 229.10(c) and 229.12, whichever is later.

(4) For the purposes of this section, a "reasonable period" is an extension of up to one business day for checks described in § 229.10(c)(1)(vi)[,] ►and two◄ [five] business days for [checks described in § 229.12(b) (1) through (4), and six business days for checks described in § 229.12(c) (1) and (2) or § 229.12(f)]►all other checks◄. A longer extension may be reasonable, but the bank has the burden of so establishing.

7. Section 229.14 is revised to read as follows:

§ 229.14 Payment of interest.

(a) *In general.* A depositary bank shall begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the depositary bank receives credit for the funds. For the purposes of this section, the depositary bank may—

(1) Rely on the availability schedule of its Federal Reserve Bank[, Federal Home Loan Bank,] or correspondent bank to determine the time credit is actually received; and

(2) Accrue interest or dividends on funds deposited in interest-bearing accounts by checks that the depositary bank sends to paying banks or subsequent collecting banks for payment or collection based on the availability of funds the depositary bank receives from the paying or collecting banks.

(b) *Special rule for credit unions.* Paragraph (a) of this section does not apply to any account at a bank described in § 229.2(e)(4), if the bank—

(1) Begins the accrual of interest or dividends at a later date than the date described in paragraph (a) of this section with respect to all funds, including cash, deposited in the account; and

(2) Provides notice of its interest or dividend payment policy in the manner required under § 229.16(d).

(c) *Exception for checks returned unpaid.* This subpart does not require a bank to pay interest or dividends on funds deposited by a check that is returned unpaid.

8. Section 229.15 is revised to read as follows:

§ 229.15 General disclosure ►and notice◄ requirements.

(a) *Form of disclosures ►and notices◄.* A bank shall make the disclosures ►and notices◄ required by this subpart clearly and conspicuously in writing. Disclosures ►and notices◄, other than those posted at locations where employees accept consumer deposits and ATMs and the notice on preprinted deposit slips, must be in a form that the customer may keep. The disclosures shall be grouped together and shall not contain any information not related to the disclosures required by this subpart. If contained in a document that sets forth other account terms, the disclosures shall be highlighted within the document by, for example, use of a separate heading.

(b) [*Uniform r*]►*R◄eference to day of availability.* In its disclosure►s and notices◄, a bank shall [describe funds as being available for withdrawal on "the _____ business day after" the day of deposit. In this calculation, the first business day is the business day following the banking day the deposit was received, and the last business day is the day on which the funds are made available.] ►specify the business day on which funds are available for withdrawal by describing that day in relation to the banking day on which the bank received the deposit. A bank shall use the following, or substantially similar, language—

(1) The banking day of receipt may be described as "the same business day;"

(2) The business day after the banking day of receipt may be described as "the next business day;" and

(3) A business day after the banking day of receipt may be described using a phrase that includes—

(i) A cardinal number, such as "1 business day" or "2 business days;" or

(ii) An ordinal number, such as "the first business day" or "the second business day."◄

(c) *Multiple accounts and multiple account holders.* A bank need not give multiple disclosures to a customer that holds multiple accounts if the accounts are subject to the same availability policies. Similarly, a bank need not give separate disclosures to each customer on a jointly held account.

(d) *Dormant or inactive accounts.* A bank need not give availability disclosures to a customer that holds a dormant or inactive account.

9. Section 229.16 is revised to read as follows:

§ 229.16 Specific availability policy disclosure.

(a) [*General*]►*In general◄*. To meet the requirements of a specific availability policy disclosure under §§ 229.17 and 229.18(d), a bank shall provide a disclosure describing the bank's policy as to when funds deposited in an account are available for withdrawal. The disclosure must reflect the policy followed by the bank in most cases. A bank may impose longer delays on a case-by-case basis or by invoking

one of the exceptions in § 229.13, provided this is reflected in the disclosure.

(b) *Content of specific availability policy disclosure.* The specific availability policy disclosure shall contain the following, as applicable—

(1) A summary of the bank's availability policy;

(2) A description of any categories of deposits or checks ►that are subject to differing◄ [used by the bank when it delays] availability (such as [local or nonlocal] ►next-day-availability◄ checks ►and other checks◄)[; how to determine the category to which a particular deposit or check belongs;] and when each category will be available for withdrawal (including a description of the bank's business days and when a deposit is considered received);[1]

[1 A bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose that certain checks, such as some credit union share drafts that are payable by one bank but payable through another bank, will be treated as local or nonlocal checks based upon the location of the bank by which they are payable and not on the basis of the location of the bank whose routing number appears on the check. A bank that makes funds from nonlocal checks available for withdrawal within the time periods required for local checks under §§ 229.12 and 229.13 is not required to provide this disclosure on payable-through checks to its customers. The statement concerning payable-through checks must describe how the customer can determine whether these checks will be treated as local or nonlocal, or state that special rules apply to such checks and that the customer may ask about the availability of these checks.]

(3) A description of any of the exceptions in § 229.13 that may be invoked by the bank, including the time following a deposit that funds generally will be available for withdrawal and a statement that the bank will notify the customer if the bank invokes one of the exceptions;

(4) A description, as specified in paragraph (c)(1) of this section, of any case-by-case policy of delaying availability that may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy; and

(5) A description of how the customer can differentiate between a proprietary and a nonproprietary ATM, if the bank makes funds from deposits at nonproprietary ATMs available for withdrawal later than funds from deposits at proprietary ATMs.

(c) *Longer delays on a case-by-case basis*—(1) *Notice in specific policy disclosure.* A bank that has a policy of making deposited funds available for withdrawal sooner than required by this subpart may extend the time when funds are available up to the time periods allowed under this subpart on a case-by-case basis, provided the bank includes the following in its specific policy disclosure—

(i) A statement that the time when deposited funds are available for withdrawal may be extended in some cases, and the latest time following a deposit that funds will be available for withdrawal;

(ii) A statement that the bank will notify the customer if funds deposited in the customer's account will not be available for withdrawal until later than the time periods stated in the bank's availability policy; and

(iii) A statement that customers should ask if they need to be sure about when a particular deposit will be available for withdrawal.

(2) *Notice at time of case-by-case delay*—(i) *In general.* When a depositary bank extends the time when funds will be available for withdrawal on a case-by-case basis, it must provide the depositor with a written notice. The notice shall include the following information—

(A) A number or code, which need not exceed four digits, that identifies the customer's account.

(B) The date of the deposit;

►(C) The total amount of the deposit◄

[(C)]►(D)◄ The amount of the deposit that is being delayed; and

[(D)]►(E)◄ The day the funds will be available for withdrawal.

(ii) *Timing of notice.* The notice shall be provided to the depositor at the time of the deposit, unless the deposit is not made in person to an employee of the depositary bank or the decision to extend the time when the deposited funds will be available is made after the time of the deposit. If notice is not given at the time of the deposit, the depositary bank shall mail or deliver the notice to the customer not later than the first business day following the banking day the deposit is made. ►If the customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer not later than the first business day following the banking day the deposit is made.◄

(3) *Overdraft and returned check fees.* ►(i)◄ A depositary bank that extends the time when funds will be available for withdrawal on a case-by-case basis and does not furnish the depositor with written notice at the time of deposit shall not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks or other debits to the account, if—

[(i)]►(A)◄ The overdraft or return of the check or other debit would not have occurred except for the fact that the deposited funds were delayed under paragraph (c)(1) of this section; and

[(ii)]►(B)◄ The deposited check was paid by the paying bank.

►(ii)◄ Notwithstanding the foregoing, the depositary bank may assess an overdraft or returned check fee if it includes a notice concerning overdraft and returned check fees with the notice required in paragraph (c)(2) of this section and, when required, refunds any such fees upon the request of the customer. The notice must state that the customer may be entitled to a refund of overdraft or returned check fees that are assessed if the check subject to the delay is paid and how to obtain a refund.

(d) *Credit union notice of interest payment policy.* If a bank described in § 229.2(e)(4) begins to accrue interest or dividends on all deposits made in an interest-bearing account, including cash deposits, at a later time than the day specified in § 229.14(a), the bank's specific policy disclosures shall contain an explanation of when interest or dividends on deposited funds begin to accrue.

10. § 229.17 is republished to read as follows:

§ 229.17 Initial disclosures.

Before opening a new account, a bank shall provide a potential customer with the applicable specific availability policy disclosure described in § 229.16.

11. § 229.18 is republished to read as follows:

§ 229.18 Additional disclosure requirements.

(a) *Deposit slips.* A bank shall include on all preprinted deposit slips furnished to its customers a notice that deposits may not be available for immediate withdrawal.

(b) *Locations where employees accept consumer deposits.* A bank shall post in a conspicuous place in each location where its employees receive deposits to consumer accounts a notice that sets forth the time periods applicable to the availability of funds deposited in a consumer account.

(c) *Automated teller machines.* (1) A depositary bank shall post or provide a notice at each ATM location that funds deposited in the ATM may not be available for immediate withdrawal.

(2) A depositary bank that operates an off-premises ATM from which deposits

are removed not more than two times each week, as described in § 229.19(a)(4), shall disclose at or on the ATM the days on which deposits made at the ATM will be considered received.

(d) *Upon request.* A bank shall provide to any person, upon oral or written request, a notice containing the applicable specific availability policy disclosure described in § 229.16.

(e) *Changes in policy.* A bank shall send a notice to holders of consumer accounts at least 30 days before implementing a change to the bank's availability policy regarding such accounts, except that a change that expedites the availability of funds may be disclosed not later than 30 days after implementation.

13. Section 229.19 is revised to read as follows:

§ 229.19 Miscellaneous.

(a) *When funds are considered deposited.* For the purposes of this subpart—

(1) Funds deposited at a staffed facility, ATM, or contractual branch are considered deposited when they are received at the staffed facility, ATM, or contractual branch;

(2) Funds mailed to the depositary bank are considered deposited on the day they are received by the depositary bank;

(3) Funds deposited to a night depository, lock box, or similar facility are considered deposited on the day on which the deposit is removed from such facility and is available for processing by the depositary bank;

(4) Funds deposited at an ATM that is not on, or within 50 feet of, the premises of the depositary bank are considered deposited on the day the funds are removed from the ATM, if funds normally are removed from the ATM not more than two times each week; and

(5) Funds may be considered deposited on the next banking day, in the case of funds that are deposited—

(i) On a day that is not a banking day for the depositary bank; or

(ii) After a cut-off hour set by the depositary bank for the receipt of deposits of 2 p.m. or later, or, for the receipt of deposits at ATMs, contractual branches, or off-premise facilities, of 12 noon or later. Different cut-off hours later than these times may be established for the receipt of different types of deposits, or receipt of deposits at different locations.

(b) *Availability at start of business day.* Except as otherwise provided in § 229.12[(d)]►(b)◄, if any provision of this subpart requires that funds be made available for withdrawal on any business day ►after the banking day of deposit◄, the funds shall be available for withdrawal by the later of:

(1) 9 a.m. (local time of the depositary bank); or

(2) The time the depositary bank's teller facilities (including ATMs) are available for customer account withdrawals.

(c) *Effect on policies of depositary bank.* This part does not—

(1) Prohibit a depositary bank from making funds available to a customer for withdrawal in a shorter period of time than the time required by this subpart;

(2) Affect a depositary bank's right—

(i) To accept or reject a check for deposit;

(ii) To revoke any settlement made by the depositary bank with respect to a check accepted by the bank for deposit, to charge back the customer's account for the amount of a check based on the return of the check or receipt of a notice of nonpayment of the check, or to claim a refund of such credit; and

(iii) To charge back funds made available to its customer for an electronic payment for which the bank has not received payment in actually and finally collected funds;

(3) Require a depositary bank to open or otherwise to make its facilities available for customer transactions on a given business day; or

(4) Supersede any policy of a depositary bank that limits the amount of cash a customer may withdraw from its account on any one day, if that policy—

(i) Is not dependent on the time the funds have been deposited in the account, as long as the funds have been on deposit for the time period specified in §§ 229.10, 229.12, or 229.13; and

(ii) In the case of withdrawals made in person to an employee of the depositary bank—

(A) Is applied without discrimination to all customers of the bank; and

(B) Is related to security, operating, or bonding requirements of the depositary bank.

(d) *Use of calculated availability.* A depositary bank may provide availability to its nonconsumer accounts based on a sample of checks that represents the average composition of the customer's deposits, if the terms for availability based on the sample are equivalent to or more prompt than the availability requirements of this subpart.

(e) *Holds on other funds.* (1) A depositary bank that receives a check for deposit in an account may [not] place a hold on any funds of the customer at the bank, [where]►only if◄ —

(i) The amount of funds that are held ►does not◄ exceed[s] the amount of the check; [or] ►and◄

(ii) The funds are [not] made available for withdrawal within the times specified in §§ 229.10, 229.12, and 229.13.

(2) A depositary bank that cashes a check for a customer over the counter [, other than a check drawn on the depositary bank,] may [not] place a hold on funds in an account of the customer at the bank, ►only◄ if—

(i) The amount of funds that are held ►does not◄ exceed[s] the amount of the check; [or]

(ii) The funds are [not] made available for withdrawal within the times specified in §§ 229.10, 229.12, and 229.13[.]►; and

(iii) The check is not drawn on the depositary bank. ◄

(f) *Employee training and compliance.* Each bank shall establish procedures to ensure that the bank complies with the requirements of this subpart, and shall provide each employee who performs duties subject to the requirements of this subpart with a statement of the procedures applicable to that employee.

(g) *Effect of merger transaction*—[(1) *In general*]. For purposes of this subpart, except for the purposes of the new accounts exception of § 229.13(a), and when funds are considered deposited under § 229.19(a), two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

[(2) *Merger transactions on or after July 1, 1998, and before March 1, 2000.* If banks have consummated a merger transaction on or after July 1, 1998, and before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.]

13a. Section 229.20 is revised to read as follows:

§ 229.20 Relation to state law.

(a) *In general.* ►(1)◄ Any provision of a law or regulation of any state in effect on or before September 1, 1989, that requires funds deposited in an account at a bank chartered by the state to be made available for withdrawal in a shorter time than the time provided in subpart B, and, in connection therewith, subpart A, shall—

[(1)]►(i)◄ Supersede the provisions of the EFA Act and subpart B, and, in connection therewith, subpart A, to the extent the provisions relate to the time by which funds deposited or received for deposit in an account are available for withdrawal; and

[(2)]►(ii)◄ Apply to all federally insured banks located within the state.

►(2)◄ No amendment to a state law or regulation governing the availability

of funds that becomes effective after September 1, 1989, shall supersede the EFA Act and subpart B, and, in connection therewith, subpart A, but unamended provisions of state law shall remain in effect.

(b) *Preemption of inconsistent law.* Except as provided in paragraph (a), the EFA Act and subpart B, and, in connection therewith, subpart A, supersede any provision of inconsistent state law.

(c) *Standards for preemption.* A provision of a state law in effect on or before September 1, 1989, is not inconsistent with the EFA Act, or subpart B, or in connection therewith, subpart A, if it requires that funds shall be available in a shorter period of time than the time provided in this subpart. Inconsistency with the EFA Act and subpart B, and in connection therewith, subpart A, may exist when state law—

(1) Permits a depositary bank to make funds deposited in an account by cash, electronic payment, or check available for withdrawal in a longer period of time than the maximum period of time permitted under subpart B, and, in connection therewith, subpart A; or

(2) Provides for disclosures or notices concerning funds availability relating to accounts.

(d) *Preemption determinations.* The Board may determine, upon the request of any state, bank, or other interested party, whether the EFA Act and subpart B, and, in connection therewith, subpart A, preempt provisions of state laws relating to the availability of funds.

(e) *Procedures for preemption determinations.*►(1)◄ A request for a preemption determination shall include the following—

[(1)]►(i)◄ A copy of the full text of the state law in question, including any implementing regulations or judicial interpretations of that law; and

[(2)]►(ii)◄ A comparison of the provisions of state law with the corresponding provisions in the EFA Act and subparts A and B of this part, together with a discussion of the reasons why specific provisions of state law are either consistent or inconsistent with corresponding sections of the EFA Act and subparts A and B of this part.

►(2)◄ A request for a preemption determination shall be addressed to the Secretary, Board of Governors of the Federal Reserve System.

14. Amend § 229.21 by revising paragraphs (f) and (g) to read as follows:

§ 229.21 Civil liability.

* * * * *

(f) *Exclusions.* This section does not apply to claims that arise under subpart►s◄ C ►or D◄ of this part or to actions for wrongful dishonor.

(g) *Record retention.* (1) A bank shall retain evidence of compliance with the requirements imposed by this subpart for not less than two years. Records may be stored by use of [microfiche, microfilm, magnetic tape,]►electronic storage media◄ or other methods capable of accurately retaining and reproducing information.

(2) If a bank has actual notice that it is being investigated, or is subject to an enforcement proceeding by an agency charged with monitoring that bank's compliance with the EFA Act and this subpart, or has been served with notice of an action filed under this section, it shall retain the records pertaining to the action or proceeding pending final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

Subpart C—Collection of Checks

15. Revise § 229.30 to read as follows:

§ 229.30 Paying bank's responsibility for return of checks.

(a) ►*Expeditious*◄ [*R*]►*r*◄*eturn of checks.* ►(1)◄If a paying bank determines not to pay a check [it shall return the check in an expeditious manner as provided in either paragraph (a)(1) or (a)(2) of this section]►, the paying bank shall send the returned check expeditiously such that the depositary bank normally would receive the returned check no later than 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank◄.

[(1) *Two-day/four-day test.* A paying bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4 p.m. (local time of the depositary bank) of—

(i) The second business day following the banking day on which the check was presented to the paying bank, if the paying bank is located in the same check processing region as the depositary bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank, if the paying bank is not located in the same check processing region as the depositary bank.]

►(2)◄If the last business day on which the paying bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the paying bank [meets the two-day/four-day test]►satisfies its expeditious return requirement◄ if the returned check is received by the depositary bank on or before the depositary bank's next banking day.

[(2) *Forward collection test.* A paying bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

(i) Of similar amount as the returned check;

(ii) Drawn on the depositary bank; and

(iii) Deposited for forward collection in the similarly situated bank by noon on the banking day following the banking day on which the check was presented to the paying bank.]

►(3)◄[Subject to the requirement for expeditious return, a] ►A◄ paying bank may send a returned check to the depositary bank, [or] to any other bank agreeing to handle the returned check expeditiously under § 229.31(a)►, or, under § 229.30(b)(2), to any bank that handled the check for forward collection◄.

►(4)◄ A paying bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depositary bank, the amount of the returned check, and a "2" in the case of an original check (or a "5" in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100–140.

►(5)◄ This paragraph ►(a)◄ does not affect a paying bank's responsibility to return a check within the deadlines required by the U.C.C., Regulation J (12 CFR part 210), or § 229.30(c).

►(6) A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious return requirement of this subpart.◄

(b) [*Unidentifiable depositary bank.*]►*Exceptions to expeditious return of checks.* (1) The expeditious return requirement of paragraph (a) of this section does not apply if—

(i) The depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a);

(ii) The check is deposited in a depositary bank that does not maintain accounts; or

(iii) A paying bank is unable to identify the depositary bank with respect to a check.

(2)◄ A paying bank that is unable to identify the depositary bank [with respect to a check] may send the

returned check to any bank that handled the check for forward collection even if that bank does not agree to handle the check expeditiously under § 229.31(a). A paying bank sending a returned check under this paragraph ►(b)(2)◄ to a bank that handled the check for forward collection must advise the bank to which the check is sent that the paying bank is unable to identify the depositary bank. [The expeditious-return requirements in § 229.30(a) do not apply to the paying bank's return of a check under this paragraph.]

(c) *Extension of deadline.* ►(1)◄The deadline for return [or notice of nonpayment] under the U.C.C. or Regulation J (12 CFR part 210), or [§ 229.36(f)(2)] ►§ 229.36(d)(3)◄ is extended to the time of dispatch of such return [or notice of nonpayment] where a paying bank uses a means of delivery that would ordinarily result in receipt by the ►depositary◄ bank [to which it is sent] ►by 4 p.m. (local time of the depositary bank) on the second business day after the banking day on which the check was presented to the paying bank.◄[—

(1) On or before the receiving bank's next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. or later set by the receiving bank under U.C.C. 4–108, for all deadlines other than those described in paragraph (c)(2) of this section; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next cutoff hour or banking day referred to above; or

(2) [Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depositary bank), for a deadline falling on a Saturday that is a banking day (as defined in the applicable U.C.C.) for the paying bank.]

►If the last business day on which the paying bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the paying bank's deadline under the U.C.C. or Regulation J (12 CFR part 210), or § 229.36(d)(3) is extended to the time of dispatch of such return where a paying bank uses a means of delivery such that the returned check would ordinarily be received by the depositary bank on or before the depositary bank's next banking day.◄

(d) *Identification of returned check.* A paying bank returning a check shall clearly indicate on the [face] ►front◄ of the check that it is a returned check and the reason for return. If the check is a substitute check ►or electronic return◄, the paying bank shall place this information [within the image of the original check that appears on the front of the substitute check] ►such that the information would be retained on any subsequent substitute check.◄

[(e) *Depositary bank without accounts.* The expeditious return requirements of paragraph (a) of this section does not apply to checks deposited in a depositary bank that does not maintain accounts.]

[(f)]►(e)◄ *Notice in lieu of return.* ►(1)◄ If a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in [§ 229.33(b)]►paragraph (e)(2) of this section◄. The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other [requirements]►provisions◄ of this subpart.

►(2) The notice must include, if available, the—

(i) Name and routing number of the paying bank;

(ii) Name of the payee(s);

(iii) Amount of the returned check;

(iv) Date of the indorsement of the depositary bank;

(v) Account number of the customer(s) of the depositary bank;

(vi) Branch name or number of the depositary bank from its indorsement;

(vii) Trace number associated with the indorsement of the depositary bank; and

(viii) Reason for return.

(3) The notice may include other information from the check that may be useful in identifying the check being returned and the customer and must include the name and routing number of the depositary bank from its indorsement.

(4) If the paying bank is not sure of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy.◄

[(g)]►(f)◄ *Reliance on routing number.* A paying bank may [return]►send◄ a returned check based on any routing number designating the depositary bank appearing on the [returned] check in the depositary bank's indorsement ►or in the electronic image of or information related to the check◄.

16. Revise § 229.31 to read as follows:

§ 229.31 Returning bank's responsibility for return of checks.

(a) ►*Expeditious* [*R*]►*r*◄*eturn of checks.* ►(1)◄ [A] ►If the returning bank agrees to handle the return expeditiously, the◄ returning bank shall [return a returned check in an expeditious manner as provided in either paragraph (a)(1) or (a)(2) of this section]►send the returned check expeditiously such that the depositary bank normally would receive the returned check no later than 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank◄.

[(1) *Two-day/four-day test.* A returning bank returns a check in an expeditious manner if it sends the returned check in a manner such that the check would normally be received by the depositary bank not later than 4 p.m. (local time) of—

(i) The second business day following the banking day on which the check was presented to the paying bank if the paying bank is located in the same check processing region as the depositary bank; or

(ii) The fourth business day following the banking day on which the check was presented to the paying bank if the paying bank is not located in the same check processing region as the depositary bank.]

(2) If the last business day on which the returning bank may deliver a returned check to the depositary bank is not a banking day for the depositary bank, the returning bank meets this requirement if the returned check is received by the depositary bank on or before the depositary bank's next banking day.

[(2) *Forward collection test.* A returning bank also returns a check in an expeditious manner if it sends the returned check in a manner that a similarly situated bank would normally handle a check—

(i) Of similar amount as the returned check;

(ii) Drawn on the depositary bank; and

(iii) Received for forward collection by the similarly situated bank at the time the returning bank received the returned check, except that a returning bank may set a cut-off hour for the receipt of returned checks that is earlier than the similarly situated bank's cut-off hour for checks received for forward collection, if the cut-off hour is not earlier than 2 p.m.]

►(3)◄ [Subject to the requirement for expeditious return, t]►T◄he returning bank may send the returned check to the depositary bank, [or] to

any bank agreeing to handle the returned check expeditiously under § 229.31(a)►, or, under § 229.31(b)(2), to any bank that handled the check for forward collection◄.

►(4)◄ The returning bank may convert the returned check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depositary bank, the amount of the returned check, and a "2" in the case of an original check (or a "5" in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100–140. [The time for expeditious return under the forward collection test, and the deadline for return under the U.C.C. and Regulation J (12 CFR part 210), are extended by one business day if the returning bank converts a returned check to a qualified returned check. This extension does not apply to the two-day/four-day test specified in paragraph (a)(1) of this section or when a returning bank is returning a check directly to the depositary bank.]

►(b) *Exceptions to expeditious return of checks.* (1) The expeditious return requirement of paragraph (a) of this section does not apply if—

(i) The depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a);

(ii) The check is deposited in a depositary bank that does not maintain accounts;

(iii) A returning bank is unable to identify the depositary bank with respect to a check; or

(iv) The returning bank received the returned check pursuant to paragraph (b)(2) of this section or § 229.30(b)(2).

(2) If a returning bank is unable to identify the depositary bank, the returning bank may send the returned check to any bank that handled the check for forward collection, if the returning bank was not a collecting bank with respect to the returned check; or a prior collecting bank, if the returning bank was a collecting bank with respect to the returned check. A returning bank sending a returned check under this paragraph (b)(2) to a bank that handled the check for forward collection must advise the bank to which the check is sent that the returning bank is unable to identify the depositary bank.◄

[(b) *Unidentifiable depositary bank.* A returning bank that is unable to identify the depositary bank with respect to a returned check may send the returned check to—

(1) Any collecting bank that handled the check for forward collection if the returning bank was not a collecting bank with respect to the returned check; or

(2) A prior collecting bank, if the returning bank was a collecting bank with respect to the returned check;

A returning bank sending a returned check under this paragraph must advise the bank to which the check is sent that the returning bank is unable to identify the depositary bank.

The expeditious return requirements in paragraph (a) of this section do not apply to return of a check under this paragraph. A returning bank that receives a returned check from a paying bank under § 229.30(b), or from a returning bank under this paragraph, but that is able to identify the depositary bank, must thereafter return the check expeditiously to the depositary bank.]

(c) *Settlement.* A returning bank shall settle with a bank sending a returned check to it for return by the same means that it settles or would settle with the sending bank for a check received for forward collection drawn on the depositary bank. This settlement is final when made.

(d) *Charges.* A returning bank may impose a charge ►on a bank sending a returned check◄ for handling the returned check.

[(e) *Depositary bank without accounts.* The expeditious return requirement[s] of paragraph (a) of this section does not apply to checks deposited with a depositary bank that does not maintain accounts.]

[(f)]►(e)◄ *Notice in lieu of return.* If a check is unavailable for return, the returning bank may send in its place a copy of the front and back of the returned check, or, if no copy is available, a written notice of nonpayment containing the information specified in [§ 229.33(b)]►§ 229.30(e)(2)◄. The copy or notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the expeditious return requirements of this section and to the other [requirements]►provisions◄ of this subpart.

[(g)]►(f)◄ *Reliance on routing number.* A returning bank may [return]►send◄ a returned check based on any routing number designating the depositary bank appearing on the returned check in the depositary bank's indorsement►,◄ [or] in magnetic ink on a qualified returned check►, or in the electronic image or information included in the electronic return◄.

17. Revise § 229.32 to read as follows:

§ 229.32 Depositary bank's responsibility for returned checks.

►(a) *Acceptance of electronic returns.* (1) A depositary bank agrees to accept an electronic return from a paying bank if it has agreed to receive the electronic return—

(i) Directly from the paying bank;

(ii) Directly from a returning bank that has held itself out as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to return checks expeditiously under § 229.31(a); or

(iii) As otherwise agreed with the paying bank.

(2) *When electronic return received.* A depositary bank receives an electronic return when the return is delivered to the electronic return point designated by the depositary bank or, by agreement, otherwise is made available to the depositary bank for retrieval or review.

(3) A depositary bank may require that electronic returns be separated from electronic collection items.◄

[(a)]►(b)◄ *Acceptance of* ►*paper*◄ *returned checks.* ►(1)◄A depositary bank shall accept ►paper◄ returned checks [and written notices of nonpayment].

[(1)]►(i)◄At a location ►, if any,◄ at which presentment of ►paper◄ checks for forward collection is requested by the depositary bank; and

[(2)(i)]►(ii)(A)◄ At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;

[(ii)]►(B)◄ If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check;

[(iii) If the address in the indorsement is not in the same check processing region as the address associated with the routing number of the bank in its indorsement on the check, at a location consistent with the address in the indorsement and at a branch or head office associated with the routing number in the bank's indorsement;] or

[(iv)]►(C)◄ If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank.

►(2)◄ A depositary bank may require that returned checks be separated from forward collection checks.

[(b)]►(c)◄ *Payment.* ►(1)◄ A depositary bank shall pay the returning ►bank◄ or paying bank returning the check to it for the amount of the check prior to the close of business on the banking day on which it received the check ("payment date") by—

[(1)]►(i)◄ Debit to an account of the depositary bank on the books of the returning ►bank◄ or paying bank;

[(2)]►(ii)◄ Cash;

[(3)]►(iii)◄ Wire transfer; or

[(4)]►(iv)◄ Any other form of payment acceptable to the returning ►bank◄ or paying bank[;]►.◄

►(2)◄ [provided that t] ►T◄he proceeds of the payment [are] ►must be◄ available to the returning ►bank◄ or paying bank in cash or by credit to an account of the returning ►bank◄ or paying bank on or as of the payment date. If the payment date is not a banking day for the returning ►bank◄ or paying bank or the depositary bank is unable to make the payment on the payment date, payment shall be made by the next day that is a banking day for the returning ►bank◄ or paying bank. These payments are final when made.

[(c)]►(d)◄ *Misrouted returned checks [and written notices of nonpayment]*. If a bank receives a returned check [or written notice of nonpayment] on the basis that it is the depositary bank, and the bank determines that it is not the depositary bank with respect to the check [or notice], it shall either promptly send the returned check [or notice] to the depositary bank directly or by means of a returning bank agreeing to handle the returned check [expeditiously under § 229.31(a)], or send the check [or notice] back to the bank from which it was received.

[(d)]►(e)◄ *Charges.* A depositary bank may not impose ►on the bank returning the check◄ a charge for accepting and paying checks being returned to it.

►(f) *Notification to customer.* If the depositary bank receives a returned check, it shall send or give notice to its customer of the facts by midnight of the banking day following the banking day on which it received the returned check, or within a longer reasonable time.◄

18. Revise § 229.33 to read as follows.

►§ 229.33 Electronic collection items and electronic returns.

(a) *Checks under this subpart.* Electronic collection items and electronic returns are subject to the provisions of this subpart as if they were checks or returned checks, unless otherwise provided in this subpart.

(b) [Reserved]◄

19. Revise § 229.34 to read as follows:

§ 229.34 Warranties.

►(a) *Transfer and presentment warranties with respect to an electronic collection item or an electronic return.* (1) Each bank that transfers or presents an electronic collection item or an electronic return and receives a settlement or other consideration for it warrants that—

(i) The electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated and the electronic information contains an accurate record of all MICR line information required for a substitute check under § 229.2(rr) of this part and the amount of the check, and

(ii) No person will receive a transfer, presentment, or return of, or otherwise be charged for, an electronic collection item, an electronic return, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid.

(2) Each bank that transfers or presents an electronic collection item makes the warranties in paragraph (a)(1) of this section to the transferee bank, any subsequent collecting bank, the paying bank, and the drawer; and

(3) Each bank that transfers an electronic return makes the warranties in paragraph (a)(1) of this section to the transferee returning bank, any subsequent returning bank, the depositary bank, and the owner of the check.◄

[(b) *Warranty of notice of nonpayment.* Each paying bank that gives a notice of nonpayment warrants to the transferee bank, to any subsequent transferee bank, to the depositary bank, and to the owner of the check that—

(1) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline under the U.C.C., Regulation J (12 CFR part 210), or § 229.30(c) of this part;

(2) It is authorized to send the notice; and

(3) The check has not been materially altered.

These warranties are not made with respect to checks drawn on a state or a unit of general local government that are not payable through or at a bank.]

[(c) *Warranty of s*]►(b) *S◄ettlement amount, encoding, and offset ►warranties for all items◄*. (1) Each bank that presents one or more checks to a paying bank and in return receives a settlement or other consideration warrants to the paying bank that the total amount of the checks presented is equal to the total amount of the settlement demanded by the presenting bank from the paying bank.

(2) Each bank that transfers one or more checks or returned checks to a collecting ►bank◄, returning ►bank◄, or depositary bank and in return receives a settlement or other consideration warrants to the transferee bank that the accompanying information, if any, accurately indicates the total amount of the checks or returned checks transferred.

(3) Each bank that presents or transfers a check or returned check warrants to any bank that subsequently handles it that, at the time of presentment or transfer, the information encoded after issue in magnetic ink ►or as electronic information◄ on the check or returned check is [correct]►accurate◄. For purposes of this paragraph, the information encoded after issue on the check or returned check includes any information placed in the MICR line of a substitute check ► or in the electronic information of an electronic collection item or electronic return◄[that represents that check or returned check].

(4) If a bank settles with another bank for checks presented, or for returned checks for which it is the depositary bank, in amount exceeding the total amount of the checks, the settling bank may set off the excess settlement amount against subsequent settlements for checks presented, or for returned checks for which it is the depositary bank, that it receives from the other bank.

[(d)]►(c)◄ *Transfer and presentment warranties with respect to a remotely created check.* (1) A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. For purposes of this paragraph (d)(1), "account" includes an account as defined in § 229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

(2) If a paying bank asserts a claim for breach of warranty under paragraph (d)(1) of this section, the warranting bank may defend by proving that the customer of the paying bank is precluded under U.C.C. 4–406, as applicable, from asserting against the paying bank the unauthorized issuance of the check.

[(a) *Warranties*]►(d) *Warranty of returned check*◄. ►(1)◄Each paying bank or returning bank that transfers a

returned check and receives a settlement or other consideration for it warrants to the transferee returning bank, to any subsequent returning bank, to the depositary bank, and to the owner of the check, that—

[(1)]►(i)◄The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the U.C.C. [, or Regulation J (12 CFR part 210),] or § 229.30(c) [of this part];

[(2)]►(ii)◄ It is authorized to return the check;

[(3)]►(iii)◄ The check has not been materially altered; and

[(4)]►(iv)◄ In the case of a notice in lieu of return, the [original] check has not and will not be returned.

►(2)◄ These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank.

►(e) *Electronic image and information transferred as an electronic collection item or electronic return.* A bank that transfers or presents an electronic image and related electronic information as if it were an electronic collection item or electronic return makes the warranties in this section as if the image and information were an electronic collection item or electronic return.◄

[(e)]►(f)◄ *Damages.* Damages for breach of these warranties shall not exceed the consideration received by the bank that presents or transfers a check or returned check, plus interest compensation and expenses related to the check or returned check, if any.

[(f)]►(g)◄ *Tender of defense.* If a bank is sued for breach of a warranty under this section, it may give a prior bank in the collection or return chain written notice of the litigation, and the bank notified may then give similar notice to any other prior bank. If the notice states that the bank notified may come in and defend and that failure to do so will bind the bank notified in an action later brought by the bank giving the notice as to any determination of fact common to the two litigations, the bank notified is so bound unless after seasonable receipt of the notice the bank notified does come in and defend.

[(g)]►(h)◄ *Notice of claim.* Unless a claimant gives notice of a claim for breach of warranty under this section to the bank that made the warranty within 30 days after the claimant has reason to know of the breach and the identity of the warranting bank, the warranting bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.

23. In § 229.35, paragraph (b) is revised to read as follows:

§ 229.35 Indorsements.

* * * * *

(b) *Liability of bank handling check.* A bank that handles a check for forward collection or return is liable to any bank that subsequently handles the check to the extent that the subsequent bank does not receive payment for the check because of suspension of payments by another bank or otherwise. This paragraph applies whether or not a bank has [placed its indorsement on]►indorsed◄ the check. This liability is not affected by the failure of any bank to exercise ordinary care, but any bank failing to do so remains liable. A bank seeking recovery against a prior bank shall send notice to that prior bank reasonably promptly after it learns the facts entitling it to recover. A bank may recover from the bank with which it settled for the check by revoking the settlement, charging back any credit given to an account, or obtaining a refund. A bank may have the rights of a holder with respect to each check it handles.

* * * * *

24. Revise § 229.36 to read as follows:

§ 229.36 Presentment [and issuance] of checks.

[(a) *Payable through and payable at checks.* A check payable at or through a paying bank is considered to be drawn on that bank for purposes of the expeditious return and notice of nonpayment requirements of this subpart].

[(b)]►(a)◄ [*Receipt at bank office or processing center*]►*Receipt of electronic collection items.* (1) A paying bank agrees to receive an electronic collection item from a presenting bank if it has agreed to receive the electronic collection item—

(i) Directly from the presenting bank; or

(ii) As otherwise agreed with the presenting bank.

(2) *When electronic collection item received.* A bank receives an electronic collection item when the item is delivered to the electronic presentment point designated by the bank or, by agreement, otherwise is made available to the bank for retrieval or review.

(3) A paying bank may require that electronic collection items be separated from electronic returns.◄

►(b) *Receipt of paper checks.* (1)◄ A check ►in paper form◄ is considered received by the paying bank when it is received:

[(1)]►(i)◄ At a location to which delivery is requested by the paying bank;

[(4)]►(ii)◄ At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address►;◄

[(2)]►(iii)◄ At an address of the bank associated with the routing number on the check, whether in magnetic ink or in fractional form►, or in the electronic image of or electronic information related to the check◄; or

[(3)]►(iv)◄ At any branch or head office, if the bank is identified on the check by name without address.

►(2) A paying bank may require that forward collection checks be separated from returned checks.◄

[(c) Reserved]

[(d)]►(c)◄ *Liability of bank during forward collection.* Settlements between banks for the forward collection of a check are final when made; however, a collecting bank handling a check for forward collection may be liable to a prior collecting bank, including the depositary bank, and the depositary bank's customer.

[(e) *Issuance of payable-through checks.* (1) A bank that arranges for checks payable by it to be payable through another bank shall require that the following information be printed conspicuously on the face of each check:

(i) The name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable; and

(ii) The words "payable through" followed by the name of the payable-through bank.

(2) A bank is responsible for damages under § 229.38 to the extent that a check payable by it and not payable through another bank is labeled as provided in this section.]

[(f)]►(d)◄ *Same-day settlement.* (1) A check is considered presented, and a paying bank must settle for or return the check pursuant to paragraph [(f)(2)]►(d)(3)◄ of this section, if►,◄ [a presenting bank delivers the check] in accordance with reasonable delivery requirements established by the paying bank►, a presenting bank delivers the check◄ and demands payment under this paragraph [(f)]►(d)◄ —

(i) ►(A) As an electronic collection item to the electronic presentment point designated by the paying bank, if the paying bank agrees to receive electronic collection items from the presenting bank under § 229.36(a); or◄

►(B)◄ At a location designated by the paying bank for receipt of checks under this paragraph ⟦(f)⟧►(d)◄ ⟦that is in the check processing region consistent with the routing number encoded in magnetic ink on the check and⟧ at which the paying bank would be considered to have received the check under paragraph (b)►(1)◄ of this section or, if no location is designated, at any location described in paragraph (b)►(1)◄ of this section; and

(ii) By 8 a.m. on a business day (local time of the location described in paragraph [(f)(1)(i)]►(d)(1)(i)◄ of this section).

►(2) A paying bank may require that checks presented under paragraph (d)(1) for settlement pursuant to paragraph (d)(3) of this section be presented as electronic collection items and be presented electronically to a designated electronic presentment point.◄

⟦A paying bank may require that checks presented for settlement pursuant to this paragraph (f)(1) be separated from other forward-collection checks or returned checks.⟧

⟦(2)⟧►(3)◄ If presentment of a check meets the requirements of paragraph ⟦(f)(1)⟧►(d)(1)◄ of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on the business day it receives the check, it either:

(i) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or

(ii) Returns the check.

⟦(3)⟧►(4)◄ Notwithstanding paragraph ⟦(f)(2)⟧►(d)(3)◄ of this section, if a paying bank closes on a business day and receives presentment of a check on that day in accordance with paragraph [(f)(1)]►(d)(1)◄ of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on its next banking day, it either:

(i) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or

(ii) Returns the check.

►(5)◄ If the closing ►in paragraph (d)(4)◄ is voluntary, unless the paying bank settles for or returns the check in accordance with paragraph ⟦(f)(2)⟧►(d)(3)◄ of this section, it shall pay interest compensation to the presenting bank for each day after the business day on which the check was presented until the paying bank settles for the check, including the day of settlement.

25. Revise § 229.38 to read as follows:

§ 229.38 Liability.

(a) *Standard of care; liability; measure of damages.* A bank shall exercise ordinary care and act in good faith in complying with the requirements of this subpart. A bank that fails to exercise ordinary care or act in good faith under this subpart may be liable to the depositary bank, the depositary bank's customer, the owner of a check, or another party to the check. The measure of damages for failure to exercise ordinary care is the amount of the loss incurred, up to the amount of the check, reduced by the amount of the loss that party would have incurred even if the bank had exercised ordinary care. A bank that fails to act in good faith under this subpart may be liable for other damages, if any, suffered by the party as a proximate consequence. Subject to a bank's duty to exercise ordinary care or act in good faith in choosing the means of return ⟦or notice of nonpayment⟧, the bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, or for loss or destruction of a check ⟦or notice of nonpayment⟧ in transit or in the possession of others. This section does not affect a paying bank's liability to its customer under the U.C.C. or other law.

(b) *Paying bank's failure to make timely return.* If a paying bank fails both to comply with § 229.30(a) and to comply with the deadline for return under the U.C.C., Regulation J (12 CFR part 210), or § 229.30(c) in connection with a single nonpayment of a check, the paying bank shall be liable under either § 229.30(a) or such other provision, but not both.

(c) *Comparative negligence.* If a person, including a bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§ 229.35), accepting a returned check ⟦or notice of nonpayment⟧ (§§ 229.32(a) and ⟦229.33(c)⟧►(b)◄), or otherwise, the damages incurred by that person under § 229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

(d) *Responsibility for certain aspects of checks*—(1) A paying bank, or in the case of a check payable through the paying bank and payable by another bank, the bank by which the check is payable, is responsible for damages under paragraph (a) of this section to the extent that the condition of the check when issued by it or its customer adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A depositary bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A reconverting bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a substitute check transferred, presented, or returned by it—

(i) Adversely affects the ability of a subsequent bank to indorse the check legibly in accordance with § 229.35; or

(ii) Causes an indorsement that previously was applied in accordance with § 229.35 to become illegible.

⟦Note:⟧►(2)◄ Responsibility under this paragraph (d) shall be treated as negligence of the paying bank, depositary bank, or reconverting bank for purposes of paragraph (c) of this section.

⟦(2) *Responsibility for payable through checks.* In the case of a check that is payable by a bank and payable through a paying bank located in a different check processing region than the bank by which the check is payable, the bank by which the check is payable is responsible for damages under paragraph (a) of this section, to the extent that the check is not returned to the depositary bank through the payable through bank as quickly as the check would have been required to be returned under § 229.30(a) had the bank by which the check is payable—

(i) Received the check as paying bank on the day the payable through bank received the check; and

(ii) Returned the check as paying bank in accordance with § 229.30(a)(1).

Responsibility under this paragraph shall be treated as negligence of the bank by which the check is payable for purposes of paragraph (c) of this section.⟧

(e) *Timeliness of action.* If a bank is delayed in acting beyond the time limits set forth in this subpart because of interruption of communication or computer facilities, suspension of payments by a bank, war, emergency conditions, failure of equipment, or other circumstances beyond its control, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

(f) *Exclusion.* Section 229.21 of this part and section 611 (a), (b), and (c) of the EFA Act (12 U.S.C. 4010 (a), (b), and (c)) do not apply to this subpart.

(g) *Jurisdiction.* Any action under this subpart may be brought in any United States district court, or in any other court of competent jurisdiction, and shall be brought within one year after

the date of the occurrence of the violation involved.

(h) *Reliance on Board rulings.* No provision of this subpart imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, regardless of whether the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason after the act or omission has occurred.

26. In § 229.39, revise paragraph (c) to read as follows:

§ 229.39 Insolvency of bank.

* * * * *

(c) *Preference against collecting, paying, or returning bank.* If a collecting, paying, or returning bank receives settlement from a subsequent bank for a check or returned check, which settlement is or becomes final, and suspends payments without making a settlement for the check with the prior bank, which is or becomes final, the prior bank has a preferred claim against the collecting ►bank◄ or returning bank.

* * * * *

27. Revise § 229.40 to read as follows:

§ 229.40 Effect of merger transaction.

[(a) *In general.*] For purposes of this subpart, two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

[(b) *Merger transactions on or after July 1, 1998, and before March 1, 2000.* If banks have consummated a merger transaction on or after July 1, 1998, and before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.]

28. Revise § 229.41 to read as follows:

§ 229.41 Relation to [S]►s◄tate law.

The provisions of this subpart supersede any inconsistent provisions of the U.C.C. as adopted in any state, or of any other state law, but only to the extent of the inconsistency.

29. Revise § 229.42 to read as follows:

§ 229.42 Exclusions.

The expeditious-return (§§ 229.30(a) and 229.31(a))[, notice-of-nonpayment (§ 229.33),] and same-day settlement [(§ 229.36(f))]►(§ 229.36(d))◄ requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

30. Revise § 229.43 to read as follows:

§ 229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands.

(a) *Definitions.* The definitions in § 229.2 apply to this section, unless otherwise noted. In addition, for the purposes of this section—

(1) *Pacific island bank* means an office of an institution that would be a bank as defined in § 229.2(e) but for the fact that the office is located in Guam, American Samoa, or the Northern Mariana Islands;

(2) *Pacific island check* means a demand draft drawn on or payable through or at a Pacific island bank, which is not a check as defined in § 229.2(k).

(b) *Rules applicable to Pacific island checks.* To the extent a bank handles a Pacific island check as if it were a check defined in § 229.2(k), the bank is subject to the following sections of this part (and the word "check" in each such section is construed to include a Pacific island check)—

(1) § 229.31, except that the returning bank is not subject to the requirement to return a Pacific island check in an expeditious manner;

(2) § 229.32;

(3) § 229.34 ►(a), (b),◄ (c)(2), (c)(3), (d), [[(e), and] (f)►, and (g)◄;

(4) § 229.35; for purposes of § 229.35(c), the Pacific island bank is deemed to be a bank;

(5) [[§ 229.36(d)]]►§ 229.36(b)◄;

(6) § 229.37;

(7) § 229.38(a) and (c) through (h);

(8) § 229.39(a), (b), (c) and (e); and

(9) §§ 229.40 through 229.42.

Subpart D—Substitute Checks

31. In § 229.52, revise paragraph (a) to read as follows:

§ 229.52 Substitute check warranties.

(a) *Content and provision of substitute check warranties.* ►(1)◄ A bank that transfers, presents, or returns a substitute check (or a paper or electronic representation of a substitute check) for which it receives consideration warrants to the parties listed in paragraph (b) of this section that—

[1] (i) The substitute check meets the requirements for legal equivalence described in § 229.51(a)(1)–(2); and

[2] (ii) No depositary bank, drawee, drawer, or indorser will receive presentment or return of, or otherwise be charged for, the substitute check, the original check, or a paper or electronic representation of the substitute check or original check such that that person will be asked to make a payment based on a check that it already has paid.

►(2) A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) makes the warranties described in paragraph (a)(1) of this section regardless of whether the bank received consideration.◄

* * * * *

32. In § 229.53, revise paragraph (a) to read as follows:

§ 229.53 Substitute check indemnity.

(a) *Scope of indemnity.* ►(1)◄ A bank that transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check for which it receives consideration shall indemnify the recipient and any subsequent recipient (including a collecting or returning bank, the depositary bank, the drawer, the drawee, the payee, the depositor, and any indorser) for any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check.

►(2) A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) shall indemnify the recipient as described in paragraph (a)(1) of this section regardless of whether the bank received consideration.◄

* * * * *

33. Revise Appendix A to Part 229 to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day-Availability Checks [and Local Checks]

[A. Each bank is assigned a routing number by an agent of the American Bankers Association. The routing number takes two forms: a fractional form and a nine-digit form. A paying bank generally is identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right-hand corner of the check) and the nine-digit form (which is printed in magnetic ink along the bottom of the check). Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable-through bank, not the payor bank.

B. The first four digits of the nine-digit routing number (and the denominator of the fractional routing number) form the "Federal Reserve routing symbol," and the first two digits of the routing number identify the Federal Reserve District in which the bank is located. Thus, 01 will be the first two digits of the routing number of a bank in the First Federal Reserve District (Boston), and 12 will be the first two digits of the routing number of a bank in the Twelfth District (San Francisco). Adding 2 to the first digit denotes

a thrift institution. Thus, 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

Fourth Federal Reserve District

Federal Reserve Bank of Cleveland

Head Office

[1] 0110	0215
0111	0216
0112	0219
0113	0220
0114	0223
0115	0260
0116	0280
0117	0310
0118	0311
0119	0312
0210	0313
0211	0319
0212	0360
0213	0410
0214	0412
0420	0441
0421	0442
0422	0510
0423	0514
0430	0515
0432	0519
0433	0520
0434	.....
0440	
0521	0650
0522	0651
0530	0652
0531	0653
0532	0654
0539	0655
0540	0660
0550	0670
0560	0710
0570	0711
0610	0712
0611	0719
0612	0720
0613	0724
0620	0730
0621	0739
0622	0740
0630	0749
0631	0750
0632	0759
0640	0810
0641	0812
0642	0813
0815	0960
0819	1010
0820	1011
0829	1012
0830	1019
0839	1020
0840	1021
0841	1022
0842	1023
0843	1030
0863	1031
0865	1039
0910	1040
0911	1041
0912	1049
0913	1070
0914	1110
0915	1111
0918	1113
0919	1119
0920	1120
0921	1122

0929	1123
1130	1251
1131	1252
1140	2111
1149	2112
1163	2113
1210	2114
1211	2115
1212	2116
1213	2117
1220	2118
1221	2119
1222	2210
1223	2211
1224	2212
1230	2213
1231	2214
1232	2215
1233	2216
1240	2219
1241	2220
1242	2223
1243	2260
1250	2280
2310	2520
2311	2521
2312	2522
2313	2530
2319	2531
2360	2532
2410	2539
2412	2540
2420	2550
2421	2560
2422	2570
2423	2610
2430	2611
2432	2612
2433	2613
2434	2620
2440	2621
2441	2622
2442	2630
2510	2631
2514	2632
2515	2640
2519	2641
2642	2813
2650	2815
2651	2819
2652	2820
2653	2829
2654	2830
2655	2839
2660	2840
2670	2841
2710	2842
2711	2843
2712	2863
2719	2865
2720	2910
2724	2911
2730	2912
2739	2913
2740	2914
2749	2915
2750	2918
2759	2919
2810	2920
2812	2921
2929	3123
2960	3130
3010	3131
3011	3140
3012	3149
3019	3163

3020	3210
3021	3211
3022	3212
3023	3213
3030	3220
3031	3221
3039	3222
3040	3223
3041	3224
3049	3230
3070	3231
3110	3232
3111	3233
3113	3240
3119	3241
3120	3242
3122	3243
3250	3252
3251	

[1] The first two digits identify the bank's Federal Reserve District. For example, 01 identifies the First Federal Reserve District (Boston), and 12 identifies the Twelfth District (San Francisco). Adding 2 to the first digit denotes a thrift institution. For example, 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.]

Federal Reserve Banks

0110 0001 5	0539 0008 9
0111 0048 1	0610 0014 6
0210 0120 8	0620 0019 0
0212 0400 5	0630 0019 9
0213 0500 1	0640 0010 1
0220 0026 6	0650 0021 0
0310 0004 0	0660 0010 9
0410 0001 4	0710 0030 1
0420 0043 7	[0711 0711 0]
0430 0030 0	0720 0029 0
0440 0050 3	0730 0033 8
0510 0003 3	[0740 0020 1]
0519 0002 3	.....
0520 0027 8	[0750 0012 9]
0530 0020 6	0810 0004 5
0820 0013 8	1120 0001 1
0830 0059 3	1130 0004 9
0840 0003 9	1140 0072 1
0910 0008 0	1210 0037 4
0920 0026 7	1220 0016 6
1010 0004 8	1230 0001 3
1020 0019 9	1240 0031 3
1030 0024 0	1250 0001 1
1040 0012 6	
1110 0003 8	

Federal Home Loan Banks

0110 0053 6	0740 0101 9
0212 0639 1	[0810 0091 9]
0260 0973 9	[0910 0091 2]
0410 0291 5	[1010 0091 2]
0420 0091 6	1011 0194 7
0430 0143 5	1110 1083 7
[0430 1862 2]	1119 1083 0
0610 0876 6	1210 0070 1
0710 0450 1	1240 0287 4
0730 0091 4	1250 0050 3
►U.S. Treasury Checks and Postal Money Orders	0000 0051 8
U.S. Treasury Checks	Postal Money Orders
0000 0050 5	0000 0119 3
	0000 0800 2◄

34. Revise Appendix C to Part 229 to read as follows:

Appendix C to Part 229—Model Availability-Policy Disclosures, Clauses, and Notices; Model Substitute-Check-Policy Disclosure and Notices

This appendix contains model availability-policy and substitute-check-policy disclosures, clauses, and notices to facilitate compliance with the disclosure and notice requirements of Regulation CC (12 CFR part 229). Although use of these models is not required, banks using them properly (with the exception of models C–22 through C–25) to make disclosures required by Regulation CC are deemed to be in compliance.

Model Disclosures

C–1 Next-day availability
C–2 Next-day availability and section 229.13 exceptions
C–3►A◄ Next-day availability, case-by-case holds to statutory limits ►without cash-withdrawal limitation◄, and section 229.13 exceptions
►C–3B Next-day availability, case-by-case holds to statutory limits with cash-withdrawal limitation, and section 229.13 exceptions◄
C–4►A◄ Holds to statutory limits on all deposits [(includes chart)] ►without cash-withdrawal limitation◄
C–[5]►4B◄ Holds to statutory limits on all deposits ►with cash-withdrawal limitation◄
C–5[A] Substitute-Check-Policy Disclosure Model

Model Clauses

[C–6 Holds on other funds (check cashing)]
[C–7 Holds on other funds (other account)]
[C–8 Appendix B availability (nonlocal checks)]
C–[9]►6◄ Automated teller machine deposits (extended hold)
[C–10 Cash-withdrawal limitation]
C–[11]►7◄ Credit union interest-payment policy
C–[11A]►8◄ Availability of funds deposited at other locations

Model Notices

C–[12]►9◄ Exception ►or reasonable-cause◄ hold notice
[C–13 Reasonable-cause hold notice]
C–[14]►10◄ One-time notice for large-deposit and redeposited-check exception holds
C–[15]►11◄ One-time notice for repeated-overdraft exception holds
C–[16]►12A◄ Case-by-case hold notice ►without cash-withdrawal limitation
C–16[B]►12B◄ Case-by-case hold notice with cash-withdrawal limitation◄
C–[17]►13◄ Notice at locations where employees accept consumer deposits
C–[18]►14◄ Notice at locations where employees accept consumer deposits (case-by-case holds)
C–[19]►15◄ Notice at automated teller machines
C–[20]►16◄ Notice at automated teller machines (delayed receipt)
C–[21]►17◄ Deposit-slip notice
C–[22]►18◄ Expedited-Recredit Claim, Valid-Claim Refund Notice
C–[23]►19◄ Expedited-Recredit Claim, Provisional-Refund Notice
C–[24]►20◄ Expedited-Recredit Claim, Denial Notice
C–[25]►21◄ Expedited-Recredit Claim, Reversal Notice

[C–1 Next-Day Availability

YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use them to pay checks that you have written. For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and Federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

C–2—Next-Day Availability and Section 229.13 Exceptions

YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and Federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C–3—Next-Day Availability, Case-by-Case Holds to Statutory Limits, and Section 229.13 Exceptions

YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written. For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and Federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit. The first $100 of your deposits, however, will be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit. If you will need the funds from a deposit right away, you should ask us when the funds will be available.

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit. Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C–4—Holds to Statutory Limits on All Deposits (Includes Chart)

YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you
- Wire transfers
- Checks drawn on (bank name) [unless (any limitations related to branches in different states or check-processing regions)]

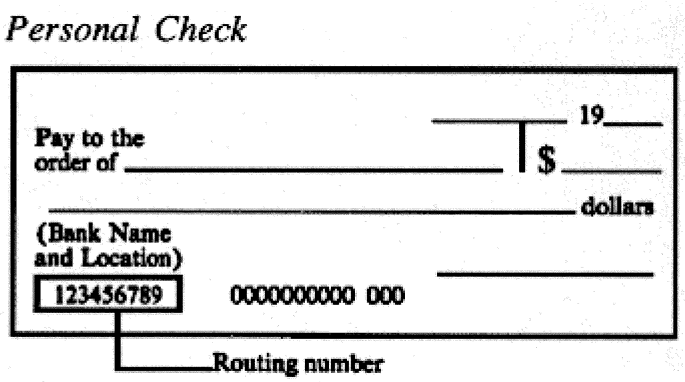
If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

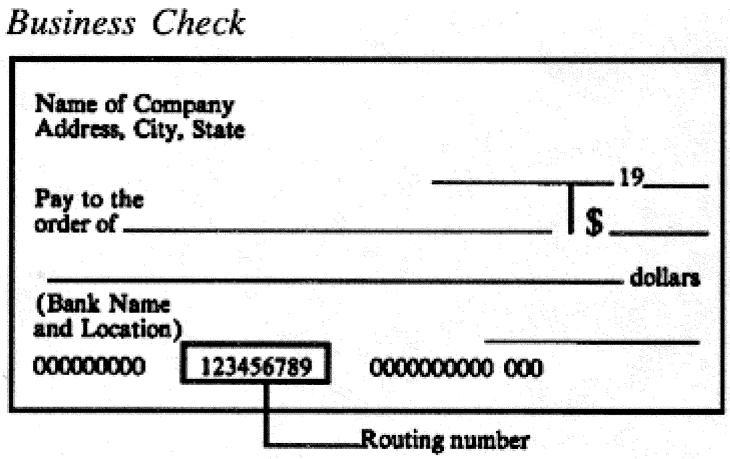
- Cash
- State and local government checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)]
- Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)]
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

Other Check Deposits

To find out when funds from other check deposits will be available, look at the first four digits of the routing number on the check:





Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Once you have determined the first four digits of the routing number (1234 in the examples above), the chart below will show you when funds from the check will be available. If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

First four digits from routing number	*When funds are available*	*When funds are available if a deposit is made on a Monday*
[local numbers]	$100 on the first business day after the day of your deposit.	Tuesday
	Remaining funds on the second business day after the day of your deposit.	Wednesday
All other numbers	$100 on the first business day after the day of your deposit.	Tuesday
	Remaining funds on the fifth business day after the day of your deposit.	Monday of the following week

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit. Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

C–5—Holds to Statutory Limits on All Deposits

YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to delay the availability of funds from your cash and check deposits. During the delay, you may not withdraw the funds in cash and we will not use the funds to pay checks that you have written.

Determining the Availability of a Deposit

The length of the delay is counted in business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and Federal holidays. If you make a deposit before (time of day) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after (time of day) or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

The length of the delay varies depending on the type of deposit and is explained below.

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

- U.S. Treasury checks that are payable to you
- Wire transfers
- Checks drawn on (bank name) [unless (any limitations related to branches in different states or check-processing regions)]

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

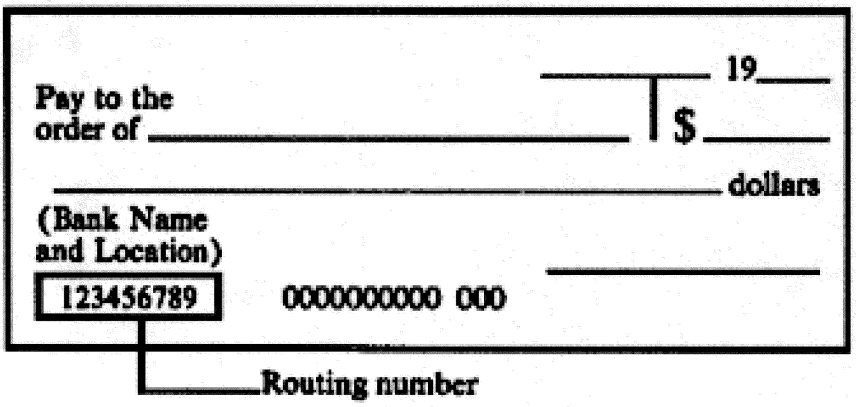
- Cash
- State and local government checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)]
- Cashier's, certified, and teller's checks that are payable to you [if you use a special deposit slip available from (where deposit slip may be obtained)]
- Federal Reserve Bank checks, Federal Home Loan Bank checks, and postal money orders, if these items are payable to you

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day of your deposit.

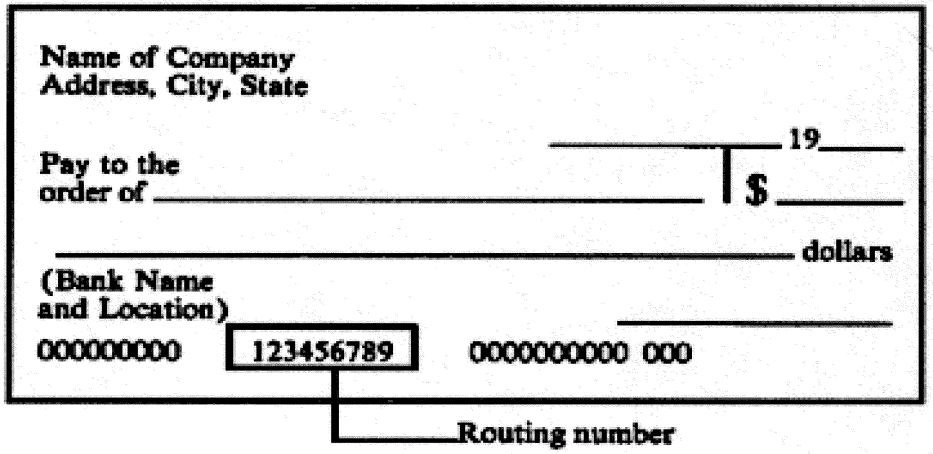
Other Check Deposits

The delay for other check deposits depends on whether the check is a local or a nonlocal check. To see whether a check is a local or a nonlocal check, look at the routing number on the check:

Personal Check



Business Check



If the first four digits of the routing number (1234 in the examples above) are (list of local numbers), then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make fundsfrom local and nonlocal checks available as follows.

1. Local checks. The first $100 from a deposit of local checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the second business day after the day of your deposit. For example, if you deposit a local check of $700 on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Wednesday.

2. Nonlocal checks. The first $100 from a deposit of nonlocal checks will be available on the first business day after the day of your deposit. The remaining funds will be available on the fifth business day after the day of your deposit.

For example, if you deposit a $700 nonlocal check on a Monday, $100 of the deposit is available on Tuesday. The remaining $600 is available on Monday of the following week.

Longer Delays May Apply

Funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than $5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the (number) business day after the day of your deposit. If you deposit both categories of checks, $100 from the checks will be available on the first business day after the day of your deposit, not $100 from each category of check.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the (number) business day after the day of your deposit.

BILLING CODE 6210–01–P

► *Model C-1- Next-day availability*

DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

Availability Timeline

When a deposit is made by ...	Deposited funds are available ...
• Electronic direct deposit • Wire transfer • Cash	• The same business day
• Check	• The next business day

What is a "Business Day?"

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before *(time of day)* on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

[Check Cashing, Immediate Availability, and Holds on Other Funds

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your other account(s) according to the timelines described elsewhere in this policy.]

C-2— Next-Day Availability and Section 229.13 Exceptions

DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

Availability Timeline for Deposits to Established Accounts

Below is our general policy for deposits to accounts open for more than 30 days. **Longer delays may apply,** and different rules apply for **checks deposited to accounts open 30 days or less** (see page 2).

When a deposit is made by ...	Deposited funds are available ...
• **Electronic direct deposit** • **Wire transfer** • **Cash**	• The same business day
• **Check**	• The next business day

What is a "Business Day?"

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

[Check Cashing, Immediate Availability, and Holds on Other Funds

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your other account(s) according to the timelines described elsewhere in this policy.]

Longer Delays May Apply

Funds from check deposits may be delayed for up to **(*number*) business days** if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than $(*large-deposit amount*) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds, and we will tell you when the funds will be available.

C-2— Next-Day Availability and Section 229.13 Exceptions

DEPOSIT AVAILABILITY POLICY (continued)

Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)

When a deposit is made by ...	Deposited funds are available ...
• **Electronic direct deposit** • **Wire transfer** • **Cash**	• The same business day
• **U.S. Treasury check** payable to you	• The first $(*new-account amount*) is available on the next business day • Any remainder over $(*new-account amount*) is available in 9 business days
• **Government**, **cashier's**, **certified**, **teller's**, or **traveler's check** that is payable to you [and deposited with a special deposit slip*] • **Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check** payable to you	• The first $(*new-account amount*) is available on the next business day if deposited with a teller, otherwise 2 business days • Any remainder over $(*new-account amount*) is available in 9 business days
• **Other checks** not specifically described above *For example, personal checks, or checks not written to you*	• In (*number*) business days

[* *Special deposit slips can be obtained in any branch. Government, cashier's, certified, teller's, or traveler's checks will be processed like "other checks" if they are not deposited with a special deposit slip.*]

C-3A— Next-Day Availability, Case-by-Case Holds to Statutory Limits Without Cash-Withdrawal Limitation, and Section 229.13 Exceptions

DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

Availability Timeline for Deposits to Established Accounts

Below is our general policy for deposits to accounts open for more than 30 days. **Longer delays may apply,** and different rules apply for **checks deposited to accounts open 30 days or less** (see page 2).

When a deposit is made by ...	Deposited funds are available ...
• **Electronic direct deposit** • **Wire transfer** • **Cash**	• The same business day
• **Check**	• Usually the next business day, but see "Longer Delays May Apply" below

What is a "Business Day?"

A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

[Check Cashing, Immediate Availability, and Holds on Other Funds

We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]

Longer Delays May Apply

Funds from check deposits may not be available according to the timeline described above. In some cases funds may be held for up to 2 business days. In these cases, the first $(*minimum amount*) of the deposit will be available on the next business day.

Funds from check deposits may be delayed for up to **(*number*) business days** if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than $(*large-deposit amount*) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds, and we will tell you when the funds will be available.

If you will need the funds from a check deposit right away, ask us when the funds will be available.

C-3A— Next-Day Availability, Case-by-Case Holds to Statutory Limits Without Cash-Withdrawal Limitation, and Section 229.13 Exceptions

DEPOSIT AVAILABILITY POLICY (continued)

Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)

When a deposit is made by ...	Deposited funds are available ...
• **Electronic direct deposit** • **Wire transfer** • **Cash**	• The same business day
• **U.S. Treasury check** payable to you	• The first $(*new-account amount*) is available on the next business day • Any remainder over $(*new-account amount*) is available in 9 business days
• **Government**, **cashier's**, **certified**, **teller's**, or **traveler's check** that is payable to you [and deposited with a special deposit slip*] • **Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check** payable to you	• The first $(*new-account amount*) is available on the next business day if deposited with a teller, otherwise 2 business days • Any remainder over $(*new-account amount*) is available in 9 business days
• **Other checks** not specifically described above *For example, personal checks, or checks not written to you*	• In (*number*) business days

[* *Special deposit slips can be obtained in any branch. Government, cashier's, certified, teller's, or traveler's checks will be processed like "other checks" if they are not deposited with a special deposit slip.*]

C-3B— Next-Day Availability, Case-by-Case Holds to Statutory Limits With Cash-Withdrawal Limitation, and Section 229.13 Exceptions

DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

Availability Timeline for Deposits to Established Accounts

Below is our general policy for deposits to accounts open for more than 30 days. **Longer delays may apply,** and different rules apply for **checks deposited to accounts open 30 days or less** (see page 2).

When a deposit is made by ...	Deposited funds are available ...
• **Electronic direct deposit** • **Wire transfer** • **Cash**	• The same business day
• **Check**	• Usually the next business day, but see "Longer Delays May Apply" below

What is a "Business Day?"
A business day is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

[**Check Cashing, Immediate Availability, and Holds on Other Funds**
We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]

Longer Delays May Apply
Funds from check deposits may not be available according to the timeline described above. In some cases funds may be held for up to three business days, and in other specific cases they may be held for up to (*number*) business days after the day of your deposit. We will notify you if we delay your ability to withdraw funds, and we will tell you when the funds will be available.

In the case of a **3 business day** hold:

- The first $(*minimum amount*) of the deposit will be available on the next business day.
- Up to an additional $(*cash-withdrawal amount*) will be available for cash withdrawal beginning at (*time no later than 5:00 p.m.*) on the second business day. The entire deposit (up to $(*large-deposit amount*)) will be available for paying checks you have written on the second business day.
- The remainder (up to $(*large-deposit amount*)) will be available for cash withdrawal on the third business day.
- Any remainder over $(*large-deposit amount*) is available in (*number*) business days for cash withdrawal and writing checks.

Funds from check deposits may be delayed for up to **(*number*) business days** if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than $(*large-deposit amount*) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is an emergency, such as failure of computer or communications equipment.

If you will need the funds from a check deposit right away, ask us when the funds will be available.

C-3B— Next-Day Availability, Case-by-Case Holds to Statutory Limits With Cash-Withdrawal Limitation, and Section 229.13 Exceptions

DEPOSIT AVAILABILITY POLICY (continued)

Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)

When a deposit is made by ...	Deposited funds are available ...
• **Electronic direct deposit** • **Wire transfer** • **Cash**	• The same business day
• **U.S. Treasury check** payable to you	• The first $(*new-account amount*) is available on the next business day • Any remainder over $(*new-account amount*) is available in 9 business days
• **Government**, **cashier's**, **certified**, **teller's**, or **traveler's check** that is payable to you [and deposited with a special deposit slip*] • **Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check** payable to you	• The first $(*new-account amount*) is available on the next business day if deposited with a teller, otherwise 2 business days • Any remainder over $(*new-account amount*) is available in 9 business days
• **Other checks** not specifically described above *For example, personal checks, or checks not written to you*	• In (*number*) business days

[* *Special deposit slips can be obtained in any branch. Government, cashier's, certified, teller's, or traveler's checks will be processed like "other checks" if they are not deposited with a special deposit slip.*]

C-4A— Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation

DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

Availability Timeline for Deposits to Established Accounts

Below is our general policy for deposits to accounts open for more than 30 days. **Longer delays may apply,** and different rules apply for **checks deposited to accounts open 30 days or less** (see page 2).

A **business day** is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

When a deposit is made by ...	Deposited funds are available ...
• **Electronic direct deposit**	• The same business day
• **Wire transfer**	• The next business day
• **Cash**	• The next business day if deposited with a teller, otherwise 2 business days
• **Check from an account at this bank**	• The first $(*large-deposit amount*) is available on the next business day • Any remainder over $(*large-deposit amount*) is available in 2 business days
• **U.S. Treasury check** payable to you • **Government, cashier's, certified,** or **teller's check** payable to you and deposited with a teller [with a special deposit slip*] • **Postal money order, Federal Reserve Bank check,** or **Federal Home Loan bank check** payable to you and deposited with a teller	• The first $(*large-deposit amount*) is available on the next business day • Any remainder over $(*large-deposit amount*) is available in (*number*) business days
• **Other checks** not specifically described above *For example, personal checks, or checks not written to you*	• The first $(*minimum amount*) is available on the next business day • The remainder (up to $(*large-deposit amount*)) is available in 2 business days • Any remainder over $(*large-deposit amount*) is available in (*number*) business days

[* *Special deposit slips can be obtained in any branch. Government, cashier's, certified, or teller's checks will be processed like "other checks" if they are not deposited with a special deposit slip.*]

[**Check Cashing, Immediate Availability, and Holds on Other Funds**
We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]

C-4A— Holds to Statutory Limits on All Deposits Without Cash-Withdrawal Limitation

DEPOSIT AVAILABILITY POLICY (continued)

Longer Delays May Apply

Funds from check deposits may be delayed for up to **(*number*) business days** if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than $(*large-deposit amount*) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is a bank emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available.

Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)

When a deposit is made by ...	Deposited funds are available ...
• **Electronic direct deposit**	• The same business day
• **Wire transfer**	• The next business day
• **Cash**	• The next business day if deposited with a teller, otherwise 2 business days
• **U.S. Treasury check** payable to you	• The first $(*new-account amount*) is available on the next business day • Any remainder over $(*new-account amount*) is available in 9 business days
• **Government**, **cashier's**, **certified**, **teller's,** or **traveler's check** that is payable to you [and deposited with a special deposit slip*] • **Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check** payable to you	• The first $(*new-account amount*) is available on the next business day if deposited with a teller, otherwise 2 business days • Any remainder over $(*new-account amount*) is available in 9 business days
• **Other checks** not specifically described above *For example, personal checks, or checks not written to you*	• In (*number*) business days

[* *Special deposit slips can be obtained in any branch. Government, cashier's, certified, teller's, traveler's checks will be processed like "other checks" if they are not deposited with a special deposit slip.*]

C-4B— Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation

DEPOSIT AVAILABILITY POLICY

When a deposit is made to your account, the funds may not be available immediately. For example, if you deposit a check on Monday, you may not be able to withdraw the funds from that check, and we may not pay another check with those funds, until Tuesday or even later. See the *Availability Timeline* below for details about when you can use the funds from different types of deposits.

If you withdraw funds from a check deposit, and the check is later returned unpaid, we may charge the check back to your account.

Availability Timeline for Deposits to Established Accounts

Below is our general policy for deposits to accounts open for more than 30 days. **Longer delays may apply,** and different rules apply for **checks deposited to accounts open 30 days or less** (see page 2).

A **business day** is any day of the week except Saturday, Sunday, and Federal holidays. A deposit made before (*time of day*) on a business day is considered deposited that day. A deposit made after that time, or on a day we are closed, is considered deposited the next business day.

When a deposit is made by ...	Deposited funds are available ...
• **Electronic direct deposit**	• The same business day
• **Wire transfer**	• The next business day
• **Cash**	• The next business day if deposited with a teller, otherwise 2 business days
• **Check from an account at this bank**	• The first $(*large-deposit amount*) is available on the next business day • Any remainder over $(*large-deposit amount*) is available in 2 business days
• **U.S. Treasury check** payable to you • **Government, cashier's, certified,** or **teller's check** payable to you and deposited with a teller [with a special deposit slip*] • **Postal money order, Federal Reserve Bank check,** or **Federal Home Loan bank check** payable to you and deposited with a teller	• The first $(*large-deposit amount*) is available on the next business day • Any remainder over $(*large-deposit amount*) is available in (*number*) business days
• **Other checks** not specifically described above *For example, personal checks, or checks not written to you*	**For writing checks:** • The first $(*minimum amount*) is available on the next business day • The remainder (up to $(*large-deposit amount*)) is available in 2 business days **For cash withdrawal:** • The first $(*minimum amount*) is available on the next business day • Up to an additional $(*cash-withdrawal amount*) is available on the second business day at (*time no later than 5:00 p.m.*) • The remainder (up to $(*large-deposit amount*)) is available in 3 business days Any remainder over $(*large-deposit amount*) is available in (*number*) business days for cash withdrawal and for writing checks

[* *Special deposit slips can be obtained in any branch. Government, cashier's, certified, or teller's checks will be processed like "other checks" if they are not deposited with a special deposit slip.*]

[**Check Cashing, Immediate Availability, and Holds on Other Funds**
We may cash a check or make a check deposit available immediately if you have funds to cover that check in any of your accounts with us. If we do, we will hold those funds (equal to the amount of the check) in your account(s) according to the timelines described elsewhere in this policy.]

C-4B— Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation

DEPOSIT AVAILABILITY POLICY (continued)

Longer Delays May Apply

Funds from check deposits may be delayed for up to (***number***) **business days** if:

- We believe a deposited check will not be paid.
- You deposit checks totaling more than $(*large-deposit amount*) on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last 6 months.
- There is a bank emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available.

Availability Timeline for Deposits to New Accounts (Open 30 Days or Less)

When a deposit is made by ...	Deposited funds are available ...
• **Electronic direct deposit**	• The same business day
• **Wire transfer**	• The next business day
• **Cash**	• The next business day if deposited with a teller, otherwise 2 business days
• **U.S. Treasury check** payable to you	• The first $(*new-account amount*) is available on the next business day • Any remainder over $(*new-account amount*) is available in 9 business days
• **Government**, **cashier's**, **certified**, **teller's**, or **traveler's check** that is payable to you [and deposited with a special deposit slip*] • **Postal money order, Federal Reserve Bank check, or Federal Home Loan Bank check** payable to you	• The first $(*new-account amount*) is available on the next business day if deposited with a teller, otherwise 2 business days • Any remainder over $(*new-account amount*) is available in 9 business days
• **Other checks** not specifically described above *For example, personal checks, or checks not written to you*	• In (*number*) business days

[* *Special deposit slips can be obtained in any branch. Government, cashier's, certified, teller's, traveler's checks will be processed like "other checks" if they are not deposited with a special deposit slip.*]

BILLING CODE 6210–01–C

◀*C–5*[*A*]*—Substitute-Check-Policy Disclosure*

Substitute Checks and Your Rights

[IMPORTANT INFORMATION ABOUT YOUR CHECKING ACCOUNT]

Substitute Checks and Your Rights

What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

What are my rights regarding substitute checks?

In certain cases, Federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced-check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to (*amount, not lower than $2,500*) of your refund (plus interest if your account earns interest) within (*number of days, not more than 10*) business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than (*number of days, not more than 45*) calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at (*contact information, for example phone number, mailing address, e-mail address*). You must contact us within (*number of days, not less than 40*) calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include—

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check [and/or] the following information to help us identify the substitute check: (*identifying information, for example the check number, the name of the person to whom you wrote the check, the amount of the check*).

[*C–6*—Holds on Other Funds (Check Cashing)

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.**]**

[*C–7*—Holds on Other Funds (Other Account)

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.**]**

[*C–8*—Appendix B Availability (Nonlocal Checks)

3. *Certain other checks.* We can process nonlocal checks drawn on financial institutions in certain areas faster than usual. Therefore, funds from deposits of checks drawn on institutions in those areas will be available to you more quickly. Call us if you would like a list of the routing numbers for these institutions.**]**

*C–***[***9***]**▶*6*◀*—Automated Teller Machine Deposits (Extended Hold)*

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the **[**fifth**]**▶fourth◀ business day after the day of your deposit. This rule does not apply at ATMs that we own or operate.

(A list of our ATMs is enclosed. or A list of ATMs where you can make deposits but that are not owned or operated by us is enclosed. or All ATMs that we own or operate are identified as our machines.)

[*C–10*—Cash-Withdrawal Limitation

CASH-WITHDRAWAL LIMITATION

We place certain limitations on withdrawals in cash. In general, $100 of a deposit is available for withdrawal in cash on the first business day after the day of deposit. In addition, a total of $400 of other funds becoming available on a given day is available for withdrawal in cash at or after (time no later than 5 p.m.) on that day. Any remaining funds will be available for withdrawal in cash on the following business day.**]**

*C–***[***11***]**▶*7*◀*—Credit-Union Interest-Payment Policy*

INTEREST-PAYMENT POLICY

If we receive a deposit to your account on or before the tenth of the month, you begin earning interest on the deposit (whether it was a deposit of cash or checks) as of the first day of that month. If we receive the deposit after the tenth of the month, you begin earning interest on the deposit as of the first of the following month. For example, a deposit made on June 7 earns interest from June 1, while a deposit made on June 17 earns interest from July 1.

*C–***[***11A***]**▶*8*◀*—Availability of Funds Deposited at Other Locations*

DEPOSITS AT OTHER LOCATIONS

This availability policy only applies to funds deposited at (*location*). Please inquire for information about the availability of funds deposited at other locations.

[C–12—Exception Hold Notice

NOTICE OF HOLD

Account number: Date of deposit:

(number) (date)

We are delaying the availability of $(amount being held) from this deposit. These funds will be available on the (number) business day after the day of your deposit.

We are taking this action because:

_____ A check you deposited was previously returned unpaid.

_____ You have overdrawn your account repeatedly in the last six months.

_____ The checks you deposited on this day exceed $5,000.

_____ An emergency, such as failure of computer or communications equipment, has occurred.

_____ We believe a check you deposited will not be paid for the following reasons:[*]

_____

_____

_____

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_____

[* If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (description of procedure for obtaining refund).]

C–13—Reasonable-Cause Hold Notice

NOTICE OF HOLD

Account number: Date of deposit:

(number) (date)

We are delaying the availability of the funds you deposited by the following check: description of check, such as amount and drawer)

These funds will be available on the (number) business day after the day of your deposit. The reason for the delay is explained below:

_____ We received notice that the check is being returned unpaid.

_____ We have confidential information that indicates that the check may not be paid.

_____ The check is drawn on an account with repeated overdrafts.

_____ We are unable to verify the indorsement of a joint payee.

_____ Some information on the check is not consistent with other information on the check.

_____ There are erasures or other apparent alterations on the check.

_____ The routing number of the paying bank is not a current routing number.

_____ The check is postdated or has a stale date.

_____ Information from the paying bank indicates that the check may not be paid.

_____ We have been notified that the check has been lost or damaged in collection.

_____ Other:

_____

_____

_____

_____

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (description of procedure for obtaining refund).**]**

C–14—One-Time Notice for Large-Deposit and Redeposited-Check Exception Holds

NOTICE OF HOLD

If you deposit into your account:

• Checks totaling more than $5,000 on any one day, the first $5,000 deposited on any one banking day will be available to you according to our general policy. The amount in excess of $5,000 will generally be available on the (number) business day after the day of deposit for checks drawn on (bank name), the (number) business day after the day of deposit for local checks and (number) business day after the day of deposit for nonlocal checks after the day of your deposit. If checks (not drawn on us) that otherwise would receive next-day availability exceed $5,000, the excess will be treated as either local or nonlocal checks depending on the location of the paying bank. If your check deposit, exceeding $5,000 on any one day, is a mix of local checks, nonlocal checks, checks drawn on (bank name), or checks that generally receive next-day availability, the excess will be calculated by first adding together the (type of check), then the (type of check), then the (type of check), then the (type of check).

• A check that has been returned unpaid, the funds will generally be available on the (number) business day after the day of deposit for checks drawn on (bank name), the (number) business day after the day of deposit for local checks and the (number) business day for nonlocal checks. Checks (not drawn on us) that otherwise would receive next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C–15—One-Time Notice for Repeated-Overdraft Exception Holds

NOTICE OF HOLD

Account number: Date of deposit:

(number) (date)

We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the (number) business day after the day of your deposit for checks drawn on (bank name), the (number) business day after the day of your deposit for local checks, and the (number) business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would have received next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C–16—Case-by-Case Hold Notice

NOTICE OF HOLD

Account number: Date of deposit:
(number) (date)

We are delaying the availability of $(amount being held) from this deposit. These funds will be available on the (number) business day after the day of your deposit ([subject to our cash-withdrawal limitation policy]).

[If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (description of procedure for obtaining refund).]

C–17—Notice at Locations Where Employees Accept Consumer Deposits

FUNDS-AVAILABILITY POLICY

Description of Deposit	*When Funds Can Be Withdrawn by Cash or Check*
Direct deposits	The day we receive the deposit
Cash; wire transfers; cashier's, certified, teller's, or government checks; checks on (*bank name*) [unless (*any limitation related to branches in different check-processing regions*)], and the first $100 of a day's deposits of other checks	The first business day after the day of deposit
Local checks	The second business day after the day of deposit
Nonlocal checks	The fifth business day after the day of deposit

C–18—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)

FUNDS—AVAILABILITY POLICY

Our general policy is to allow you to withdraw funds deposited in your account on the (number) business day after the day we receive your deposit. Funds from electronic deposits will be available on the day we receive the deposit. In some cases, we may delay your ability to withdraw funds beyond the (number) business day. Then, the funds will generally be available by the fifth business day after the day of deposit.]

BILLING CODE 6210–01–P

► *C-9—Exception or reasonable-cause hold Notice*

NOTICE OF HOLD ON DEPOSIT

This notice is to inform you that we are placing a

(*number*)-DAY HOLD on **$(*deposit amount*)**

recently deposited to your account.

You will not be able to withdraw or otherwise use money from the deposit described below until the hold is removed in (*number*) business days on **(*date*).**

Account Holder:	(*name*)
Account Number:	(*number* or *code*)
Date of Deposit:	(*date*)
Deposit Amount:	$(*deposit amount*)
Hold Amount:	$(*hold amount*)
Funds will be available:	(*date*)
Reason for Hold:	(*reason for hold*)

[***If we did not notify you of this hold when you made the deposit,*** *you can request a refund of any overdraft or returned check fees that result from the hold once the check is paid. To request a refund of such fees,* (*description of procedure for obtaining refund*).]

C-10—One-Time Notice for Large-Deposit and Redeposited-Check Exception Holds

HOLDS ON LARGE DEPOSITS AND REDEPOSITED CHECKS

If you deposit into your account:	
• **Checks totaling more than $(*large-deposit amount*) on any one day**	• The first $(*large-deposit amount*) deposited on any one day will be available according to our general policy • The amount over $(*large-deposit amount*) will generally be available on the second business day for checks drawn on (*bank name*), or in (*number*) business days for other checks • If the deposit is a mix of checks drawn on (*bank name*) and other checks, the checks drawn on (*bank name*) will be counted toward the first $(*large-deposit amount*), followed by the other checks
• **A check that has been returned unpaid**	• The funds will generally be available on the second business day for checks drawn on (*bank name*), or in (*number*) business days for other checks

C-11—One-Time Notice for Repeated-Overdraft Exception Holds

NOTICE OF EXTENDED HOLDS

As a result of repeated overdrafts to your account

you will have delayed access to check deposits

made to your account between (*date of notice*) and (*date, 6 months from date of notice*)

Account Holder:	(*name*)
Account Number:	(*number* or *code*)
Date of Notice:	(*date of notice*)
Availability:	• Checks drawn on (*bank name*) will be available in 2 business days • Other checks will be available in (*number*) business days

C-12A—Case-by-Case Hold Notice Without Cash-Withdrawal Limitation

NOTICE OF HOLD ON DEPOSIT

This notice is to inform you that we are placing a

(*number*)-DAY HOLD on $(*deposit amount*)

recently deposited to your account.

You will not have full access to all the money from the deposit described below until the hold is removed in (*number*) business days on (***date***). See below for more information.

Account Holder:	(*name*)
Account Number:	(*number* or *code*)
Date of Deposit:	(*date*)
Availability Timeline:	• The first $(*minimum amount*) will be available on (*date*) • The remaining $(*amount held*) will be available on (*date*)

[***If we did not notify you of this hold when you made the deposit,*** *you can request a refund of any overdraft or returned check fees that result from the hold once the check is paid. To request a refund of such fees,* (*description of procedure for obtaining refund*).]

C-12B—Case-by-Case Hold Notice With Cash-Withdrawal Limitation

NOTICE OF HOLD ON DEPOSIT

This notice is to inform you that we are placing a

(*number*)-DAY HOLD on $(*deposit amount*)

recently deposited to your account.

You will not have full access to all the money from the deposit described below until the hold is removed in (*number*) business days on **(*date*)**. See below for more information.

Account Holder:	(*name*)
Account Number:	(*number* or *code*)
Date of Deposit:	(*date*)
Availability Timeline:	**For writing checks:** • The first $(*minimum amount*) will be available on (*date*) • The remaining $(*amount held*) will be available at (*time*) on (*date*) **For cash withdrawal:** • The first $(*minimum amount*) will be available on (*date*) • Up to an additional $(*cash-withdrawal amount*) will be available at (*time no later than 5:00 p.m.*) on (*date*) • The remaining $(*amount held*) will be available on (*date*)

[***If we did not notify you of this hold when you made the deposit,*** *you can request a refund of any overdraft or returned check fees that result from the hold once the check is paid. To request a refund of such fees,* (*description of procedure for obtaining refund*).]

C-13—Notice at Locations Where Employees Accept Consumer Deposits

DEPOSIT AVAILABILITY POLICY

How soon can I withdraw funds deposited into my account?

When a deposit is made by ...	Deposited funds are available ...
Electronic direct deposit	• The same day
Cash; wire transfer; cashier's, certified, teller's or government check; or a check from an account at this bank	• The next business day
Any other check	• The first $(*minimum amount*) is available the next business day • The remainder is generally available by the (*number*) business day after the deposit

C-14—Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)

DEPOSIT AVAILABILITY POLICY

How soon can I withdraw funds deposited into my account?

When a deposit is made by ...	Deposited funds are available ...
Electronic direct deposit, wire transfer, or cash	• The same day
Check	• Usually the next business day However, we may place a hold on check deposits. In these cases, funds will generally be available by the (*number*) business day after the deposit.

If you will need the funds from a check deposit right away, you should ask us when the funds will be available.

BILLING CODE 6210–01–C

◀*C–*[*19*]▶*15*◀*—Notice at Automated Teller Machines*

AVAILABILITY OF DEPOSITS

Funds from deposits may not be available for immediate withdrawal. Please refer to your institution's rules governing funds availability for details.

C–[*20*]▶*16*◀*—Notice at Automated Teller Machines (Delayed Receipt)*

NOTICE

Deposits at this ATM between (*day*) and (*day*) will not be considered received until (*day*). The availability of funds from the deposit may be delayed as a result.

C–[*21*]▶*17*◀*—Deposit-Slip Notice*

Deposits may not be available for immediate withdrawal.

C–[*22*]▶*18*◀*—Expedited-Recredit Claim, Valid-Claim Refund Notice*

Notice of Valid Claim and Refund

We have determined that your substitute-check claim is valid. We are refunding (*amount*) [of which [(*amount*) represents fees] [and] [(*amount*) represents accrued interest]] to your account. You may withdraw these funds as of (*date*). [This refund is the amount in excess of the $2,500 [plus interest] that we credited to your account on (*date*).]

C–[*23*]▶*19*◀*—Expedited-Recredit Claim, Provisional-Refund Notice*

Notice of Provisional Refund

In response to your substitute-check claim, we are refunding (*amount*) [of which [(*amount*) represents fees] [and] [(*amount*) represents accrued interest]] to your account, while we complete our investigation of your claim. You may withdraw these funds as of (*date*). [Unless we determine that your claim is not valid, we will credit the remaining amount of your refund to your account no later than the 45th calendar day after we received your claim.]

If, based on our investigation, we determine that your claim is not valid, we will reverse the refund by withdrawing the amount of the refund [plus interest that we have paid you on that amount] from your account. We will notify you within one day of any such reversal.

C–[*24*]▶*20*◀*—Expedited-Recredit Claim, Denial Notice*

Denial of Claim

Based on our review, we are denying your substitute-check claim. As the enclosed (*type of document, for example original check or sufficient copy*) shows, (*describe reason for denial, for example the check was properly posted, the signature is authentic, there was no warranty breach*).

[We have also enclosed a copy of the other information we used to make our decision.] [Upon your request, we will send you a copy of the other information that we used to make our decision.]

C–[*25*]▶*21*◀*—Expedited-Recredit Claim, Reversal Notice*

Reversal of Refund

In response to your substitute-check claim, we provided a refund of (amount) by crediting your account on (*date(s)*). We now have determined that your substitute check claim was not valid. As the enclosed (*type of document, for example original check or sufficient copy*) shows, (*describe reason for reversal, for example the check was properly posted, the signature is authentic, there was no warranty breach*). As a result, we have reversed the refund to your account [plus interest that we have paid you on that amount] by withdrawing (*amount*) from your account on (*date*).

[We have also enclosed a copy of the other information we used to make our decision.]

[Upon your request, we will send you a copy of the information we used to make our decision.]

35. Appendix D to Part 229 is revised to read as follows:

Appendix D to Part 229—Indorsement, Reconverting Bank Identification, and Truncating Bank Identification Standards

(1) The depositary bank shall indorse an original check or substitute check according to the following specifications:

(i) The indorsement shall contain—

(A) The bank's nine-digit routing number, set off by an arrow at each end of the number and pointing toward the number, and, if the depositary bank is a reconverting bank with respect to the check, an asterisk outside the arrow at each end of the routing number to identify the bank as a reconverting bank;

(B) The indorsement date; and

(C) The bank's name or location, if the depositary bank applies the indorsement physically.

(ii) The indorsement also may contain—

(A) A branch identification;

(B) A trace or sequence number;

[(C) A telephone number for receipt of notification of large-dollar returned checks;] and

[(D)]►(C)◄ Other information, provided that the inclusion of such information does not interfere with the readability of the indorsement.

(iii)►(A)◄ The indorsement, if applied to an existing paper check, shall be placed on the back of the check so that the routing number is wholly contained in the area 3.0 inches from the leading edge of the check to 1.5 inches from the trailing edge of the check.[31]

[31] ►(B) The leading edge is defined as the right side of the check looking at it from the front. The trailing edge is defined as the left side of the check looking at it from the front. *See* American National Standards Specifications for the Placement and Location of MICR Printing, X9.13.◄

(iv) When printing its depositary bank indorsement (or a depositary bank indorsement that previously was applied electronically) onto a substitute check at the time that the substitute check is created, a reconverting bank shall place the indorsement on the back of the check between 1.88 and 2.74 inches from the leading edge of the check. The reconverting bank may omit the depositary bank's name and location from the indorsement.

(2) Each subsequent collecting bank or returning bank indorser shall protect the identifiability and legibility of the depositary bank indorsement by indorsing an original check or substitute check according to the following specifications:

(i) The indorsement shall contain only—

(A) The bank's nine-digit routing number (without arrows) and, if the collecting bank or returning bank is a reconverting bank with respect to the check, an asterisk at each end of the number to identify the bank as a reconverting bank;

(B) The indorsement date, and

(C) An optional trace or sequence number.

(ii) The indorsement, if applied to an existing paper check, shall be placed on the back of the check from 0.0 inches to 3.0 inches from the leading edge of the check.

(iii) When printing its collecting bank or returning bank indorsement (or a collecting bank or returning bank indorsement that previously was applied electronically) onto a substitute check at the time that the substitute check is created, a reconverting bank shall place the indorsement on the back of the check between 0.25 and 2.50 inches from the trailing edge of the check.

(3) A reconverting bank shall comply with the following specifications when creating a substitute check:

(i)►(A)◄ If it is a depositary bank, collecting bank, or returning bank with respect to the substitute check, the reconverting bank shall place its own indorsement onto the back of the check as specified in this appendix.

[(ii)]►(B) If it is a paying bank with respect to the substitute check or a bank that rejected a check submitted for deposit,◄ [A]►the◄ reconverting bank [that also is the paying bank with respect to the substitute check] shall so identify itself by placing on the back of the check, between 0.25 and 2.50 inches from the trailing edge of the check, its nine-digit routing number (without arrows) and an asterisk at each end of the number.

[(iii)]►(ii)◄ The reconverting bank shall place on the front of the check, outside the image of the original check[,]►--◄

►(A)◄ its nine-digit routing number (without arrows) and an asterisk at each end of the number, in accordance with ANS X9.100–140[.]►, and◄

[(iv)]►(B)◄ [The reconverting bank shall place on the front of the check, outside the image of the original check,] the truncating bank's nine-digit routing number (without arrows) and a bracket at each end of the number, in accordance with ANS X9.100–140.

(4) Any indorsement, reconverting bank identification, or truncating bank identification placed on an original check or substitute check shall be printed in black ink.

►(5) A depositary bank shall indorse an electronic collection item in accordance with ANS X9.100–187, unless the parties otherwise agree, and according to the following specifications—

(i) The electronic indorsement shall contain—

(A) The depositary bank's nine-digit routing number; and

(B) The indorsement date.

(ii) The electronic indorsement also may contain other information, provided that the inclusion of such information does not interfere with the readability of the indorsement.

(6) Each subsequent collecting bank or returning bank indorser shall protect the identifiability and legibility of the depositary bank indorsement by indorsing an electronic collection item or electronic return in accordance with ANS X9.100–187, unless the parties otherwise agree.◄

36. Amend Appendix E to Part 229 as follows:

A. Revise Sections II through XI.

B. In Section XII, revise paragraphs A. and E.

C. Revise Sections XIII through XXVIII.

D. In Section XXIX, revise paragraph B.

E. Revise Sections XXX through XXXIII.

F. Revise Section XXXVIII.

The revisions read as follows:

Appendix E to Part 229—Commentary

I. Introduction

A. Background

1. The Board interpretations, which are labeled "Commentary►,◄" [and follow]►of◄ each section of Regulation CC (12 CFR part 229)[,] provide background material to explain the Board's intent in adopting a particular part of the regulation; the Commentary also provides examples to aid in understanding how a particular requirement is to work. Under section 611(e) of the Expedited Funds Availability Act (12 U.S.C. 4010(e)) ►(the EFA Act)◄, no provision of section 611 imposing any liability shall apply to any act done or omitted in good faith conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. The Commentary is an "interpretation" of a regulation by the Board within the meaning of section 611.

II. Section 229.2 Definitions

A. Background

1. Section 229.2 defines the terms used in the regulation. For the most part, terms are defined as they are in section 602 of the [Expedited Funds Availability] ►EFA◄ Act (12 U.S.C. 4001) ►or in section 3 of the Check 21 Act (12 U.S.C. 5002)◄. The Board has made a number of changes for the sake of clarity, to conform the terminology to that which is familiar to the banking industry, to define terms that are not defined in the EFA Act ►or the Check 21 Act◄, and to carry out the purposes of the EFA Act ►and the Check 21 Act◄. The Board also has incorporated by reference the definitions of the Uniform Commercial Code where appropriate. Some of Regulation CC's definitions are self-explanatory and therefore are not discussed in this Commentary.

B. 229.2(a) Account

1. The EFA Act defines account to mean "a demand deposit account or similar transaction account at a depository institution." The regulation defines account, for purposes other than subpart D, in terms of the definition of "transaction account" in the Board's Regulation D (12 CFR part 204). This definition of account, however, excludes certain deposits, such as nondocumentary obligations (see 12 CFR 204.2(a)(1)(vii)), that are covered under the definition of "transaction account" in Regulation D. The definition applies to

accounts with general third party payment powers but does not cover time deposits or savings deposits, including money market deposit accounts, even though they may have limited third party payment powers. [The Board believes that it is appropriate to exclude t]►T◄hese accounts ►are excluded◄ because of the reference to demand deposits in the EFA Act, which suggests that the EFA Act is intended to apply only to accounts that permit unlimited third party transfers.

2. The term account also differs from the definition of transaction account in Regulation D because the term account refers to accounts held at banks. Under [S]►s◄ubparts A and C, the term bank includes not only any depository institution, as defined in the EFA Act, but also any person engaged in the business of banking, such as a Federal Reserve Bank, a Federal Home Loan Bank, or a private banker that is not subject to Regulation D. Thus, accounts at these institutions benefit from the expeditious return requirements of [S]►s◄ubpart C.

3. Interbank deposits, including accounts of offices of domestic banks or foreign banks located outside the United States, and direct and indirect accounts of the United States Treasury (including Treasury General Accounts and Treasury Tax and Loan deposits) are exempt from subpart B and, in connection therewith, subpart A. However, interbank deposits are included as accounts for purposes of subparts C and D and, in connection therewith, subpart A.

4. The Check 21 Act defines account to mean any deposit account at a bank. Therefore, for purposes of subpart D and, in connection therewith, subpart A, account means any deposit, as that term is defined by § 204.2(a)(1)(i) of Regulation D, at a bank. Many deposits that are not accounts for purposes of the other subparts of Regulation CC, such as savings deposits, are accounts for purposes of subpart D.

C. 229.2(b) Automated Clearinghouse (ACH) ►Credit Transfer◄

1. ►Automated Clearinghouse (ACH) credit transfers are included in the definition of electronic payment.◄ [The Board has defined automated clearinghouse as] ►An ACH is◄ a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular governing [automated clearinghouse]►ACH◄ items or the rules of an ACH association ►or similar interbank agreement◄. [ACH credit transfers are included in the definition of electronic payment.] ►The reference to "debit and credit transfers" does not refer to the corresponding debit and credit entries that are part of the same transaction, but to the different kinds of ACH payments. In an ACH credit transfer, the originator orders that its account be debited and another account credited. In contrast, in an ACH debit transfer, the originator, with prior authorization, orders another account to be debited and the originator's account to be credited.◄ [2. The reference to "debit and credit transfers" does not refer to the corresponding debit and credit entries that are part of the same transaction, but to the different kinds of ACH payments. In an ACH credit transfer, the originator orders that its account be debited and another account credited. In an ACH debit transfer, the originator, with prior authorization, orders another account to be debited and the originator's account to be credited.]

[3]►2◄. A facility that handles only wire transfers (defined elsewhere) is not an ACH.

D. 229.2(c) Automated Teller Machine (ATM)

1. [ATM is not defined in the EFA Act. The regulation defines a]►A◄n ATM [as]►is◄ an electronic device at which a natural person may make deposits to an account by cash or ►paper◄ check and perform other account transactions►, such as cash withdrawals◄. Point-of-sale terminals, machines that only dispense cash, night depositories, and lobby deposit boxes are not ATMs within the meaning of the definition, either because they do not accept deposits of cash or checks (e.g., point-of-sale terminals and cash dispensers) or because they only accept deposits (e.g., night depositories and lobby boxes) and cannot ►dispense cash and◄ perform other transactions. A lobby deposit box or similar receptacle in which written payment orders or deposits may be placed is not an ATM. ►Finally, a remote deposit capture device is not an ATM because a natural person can deposit neither cash nor paper checks into an account using the device.◄

2. A facility may be an ATM within this definition even if it is a branch under state or federal law, although an ATM is not a branch as that term is used in this regulation.

E. 229.2(d) Available for Withdrawal

1. Under this definition, when funds become available for withdrawal, the funds may be put to all uses for which the customer may use actually and finally collected funds in the customer's account under the customer's account agreement with the bank. Examples of such uses include payment of checks drawn on the account, certification of checks, electronic payments, and cash withdrawals. Funds are available for these uses notwithstanding provisions of other law that may restrict the use of uncollected funds (*e.g.,* 18 U.S.C. 1004; 12 U.S.C. 331).

2. If a bank makes funds available to a customer for a specific purpose (such as paying checks that would otherwise overdraw the customer's account and be returned for insufficient funds) before the funds must be made available under the bank's policy or this regulation, it may nevertheless apply a hold consistent with this regulation to those funds for other purposes (such as cash withdrawals). For purposes of this regulation, funds are considered available for withdrawal even though they are being held by the bank to satisfy an obligation of the customer other than the customer's potential liability for the return of the check. For example, a bank does not violate its obligations under this subpart by holding funds to satisfy a garnishment, tax levy, or court order restricting disbursements from the account; or to satisfy the customer's liability arising from the certification of a check, sale of a cashier's or teller's check, guaranty or acceptance of a check, or similar transaction to be debited from the customer's account.

F. 229.2(e) Bank

1. The EFA Act uses the term depository institution, which it defines by reference to section 19(b)(1)(A)(i) through (vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i) through (vi)). This regulation uses the term bank, a term that conforms to the usage the Board has previously adopted in Regulation J ►(12 CFR part 210)◄. Bank is also used in Articles 4 and 4A of the Uniform Commercial Code.

2. Bank is defined to include depository institutions, such as commercial banks, savings banks, savings and loan associations, and credit unions as defined in the EFA Act, and U.S. branches and agencies of foreign banks. For purposes of [S]►s◄ubpart B, the term does not include corporations organized under section 25A of the Federal Reserve Act, 12 U.S.C. 611–631 (Edge corporations) or corporations having an agreement or undertaking with the Board under section 25 of the Federal Reserve Act, 12 U.S.C. 601–604a (agreement corporations). For purposes of [S]►s◄ubparts C and D, and in connection therewith, [S]►s◄ubpart A, any Federal Reserve Bank, Federal Home Loan Bank, or any other person engaged in the business of banking is regarded as a bank. The phrase "any other person engaged in the business of banking" is derived from U.C.C. 1–201►(b)◄(4), and is intended to cover entities that handle checks for collection and payment, such as Edge and agreement corporations, commercial lending companies under 12 U.S.C. 3101, certain industrial banks, and private bankers, so that virtually all checks will be covered by the same rules for forward collection and return, even though they may not be covered by the requirements of [S]►s◄ubpart B. For the purposes of [S]►s◄ubparts C and D, and in connection therewith, [S]►s◄ubpart A, the term also may include a state or a unit of general local government to the extent that it pays warrants or other drafts drawn directly on the state or local government itself, and the warrants or other drafts are sent to the state or local government for payment or collection.

3. Unless otherwise specified, the term bank includes all of a bank's offices in the United States. The regulation does not cover foreign offices of U.S. banks.

4. For purposes of subpart D and, in connection therewith, subpart A, the term bank also includes the Treasury of the United States and the United States Postal Service to the extent that they act as paying banks because the Check 21 Act includes these two entities in the definition of the term bank to the extent that they act as payors.

G. 229.2(f) Banking Day and (g) Business Day

1. The EFA Act ►and the Check 21 Act◄ define[s] business day as any day excluding Saturdays, Sundays, and legal holidays. Legal holiday, however, is not defined, and the variety of local holidays, together with the practice of some banks to close midweek, makes the EFA Act's definition difficult to apply. [The Board believes that t]►T◄wo kinds of business days are relevant. First, when determining the day when funds are deposited or when a bank must perform

certain actions (such as returning a check), the focus should be on a day that the bank is actually open for business. Second, when counting days for purposes of determining when funds must be available under the regulation[or when notice of nonpayment must be received by the depositary bank], there would be confusion and uncertainty in trying to follow the schedule of a particular bank, and there is less need to identify a day when a particular bank is open. Most banks that act as intermediaries (large correspondents and Federal Reserve Banks) follow the same holiday schedule. Accordingly, the regulation has two definitions: Business day generally follows the standard Federal Reserve Bank holiday schedule (which is followed by most large banks), and banking day is defined to mean that part of a business day on which a bank is open for substantially all of its banking activities.

2. The definition of banking day corresponds to the definition of banking day in U.C.C. 4–104(a)(3), except that a banking day is defined in terms of a business day. Thus, if a bank is open on Saturday, Saturday might be a banking day for purposes of the U.C.C., but it would not be a banking day for purposes of Regulation CC because Saturday is never a business day under the regulation.

3. The definition of banking day is phrased in terms of when "an office of a bank is open" to indicate that a bank may observe a banking day on a per-branch basis. A deposit made at an ATM or off-premise facility (such as a remote depository or a lock box) is considered made at the branch holding the account into which the deposit is made for the purpose of determining the day of deposit. All other deposits are considered made at the branch at which the deposit is received. For example, under § 229.19(a)(1), funds deposited at an ATM are considered deposited at the time they are received at the ATM. On a calendar day that is a banking day for the branch or other location of the depositary bank at which the account is maintained, a deposit received at an ATM before the ATM's cut-off hour is considered deposited on that banking day, and a deposit received at an ATM after the ATM's cut-off hour is considered deposited on the next banking day of the branch or other location where the account is maintained. On a calendar day that is not a banking day for the account-holding location, all ATM deposits are considered deposited on that location's next banking day. This rule for determining the day of deposit also would apply to a deposit to an off-premise facility, such as a night depository or lock box, which is considered deposited when removed from the facility and available for processing under § 229.19(a)(3). If an unstaffed facility, such as a night depository or lock box, is on branch premises, the day of deposit is determined by the banking day at the branch at which the deposit is received, whether or not it is the branch at which the account is maintained.

H. 229.2(h) Cash

1. Cash means U.S. coins and currency. The phrase in the EFA Act "including Federal Reserve notes" has been deleted as unnecessary. (*See* 31 U.S.C. 5103.)

I. 229.2(i) Cashier's Check

1. The regulation adds to the second item in the EFA Act's definition of cashier's check the phrase, "on behalf of the bank as drawer," to clarify that the term cashier's check is intended to cover only checks that a bank draws on itself. The definition of cashier's check includes checks provided to a customer of the bank in connection with customer deposit account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by noncustomers for remittance purposes, such as certain loan disbursement checks. Cashier's checks provided to customers or others are often labeled as "cashier's check," "officer's check," or "official check." The definition excludes checks that a bank draws on itself for other purposes, such as to pay employees and vendors, and checks issued by the bank in connection with a payment service, such as a payroll or a bill-paying service. Cashier's checks generally are sold by banks to substitute the bank's credit for the customer's credit and thereby enhance the collectibility of the checks. A check issued in connection with a payment service generally is provided as a convenience to the customer rather than as a guarantee of the check's collectibility. In addition, such checks are often more difficult to distinguish from other types of checks than are cashier's checks as defined by this regulation.

J. 229.2(j) Certified Check

1. The EFA Act defines a certified check as one to which a bank has certified that the drawer's signature is genuine and that the bank has set aside funds to pay the check. Under the Uniform Commercial Code, certification of a check means the bank's signed agreement that it will honor the check as presented (U.C.C. 3–409). The regulation defines certified check to include both the EFA Act's and U.C.C.'s definitions.

K. 229.2(k) Check

1. Check is defined in section 602(7) of the EFA Act as a negotiable demand draft drawn on or payable through an office of a depository institution located in the United States, excluding noncash items. The regulation includes six categories of instruments within the definition of check. ►Check is defined in section 3 of the Check 21 Act as including nonnegotiable demand drafts. Because these instruments are often handled as cash items in the forward collection process, for the purposes of subparts C and D, and in connection therewith, subpart A, the definition of check includes nonnegotiable demand drafts drawn on or payable through a bank, drawn on a Federal Reserve Bank or Federal Home Loan Bank, or drawn on the Treasury of the United States.◄

2. The first category is negotiable demand drafts drawn on, or payable through or at, an office of a bank. As the definition of bank includes only offices located in the United States, this category is limited to checks drawn on, or payable through or at, a banking office located in the United States.

3. The EFA Act ►and the Check 21 Act◄ treat[s] drafts payable through a bank as checks, even though under the U.C.C. the payable-through bank is a collecting bank to make presentment and generally is not authorized to make payment (U.C.C. 4–106(a)). [The] ►Neither the◄ EFA Act ►nor the Check 21 Act◄ [does not] expressly address items that are payable at a bank. This regulation treats both payable-through and payable-at demand drafts as checks. [The Board believes that t]►T◄reating demand drafts payable at a bank as checks [will]►should◄ not have a substantial effect on the operations of payable-at banks—by far the largest proportion of payable-at items are not negotiable demand drafts, but time items, such as commercial paper, bonds, notes, bankers' acceptances, and securities. These time items are not covered by the requirements of the EFA Act or this regulation. [(The treatment of payable-through drafts is discussed in greater detail in connection with the definitions of local check and paying bank.)]

4. The second category is checks drawn on Federal Reserve Banks and Federal Home Loan Banks. Principal and interest payments on federal debt instruments [often are] ►may be◄ paid with checks drawn on a Federal Reserve Bank as fiscal agent of the United States[, and these fiscal agency checks are indistinguishable from other checks drawn on Federal Reserve Banks]. (*See* 31 CFR part 355.) [Federal Reserve Bank checks also are used by some banks as substitutes for cashier's or teller's checks. Similarly, s]►S◄avings and loan associations [often]►may◄ use checks drawn on Federal Home Loan Banks as teller's checks. The definition of check includes checks drawn on Federal Home Loan Banks and Federal Reserve Banks because in many cases they are the functional equivalent of Treasury checks or teller's checks.

5. The third and fourth categories of instrument included in the definition of check refer to government checks. The EFA Act refers to checks drawn on the U.S. Treasury, even though these instruments are not drawn on or payable through an office of a depository institution, and checks drawn by state and local governments. The EFA Act also [gives the Board authority to define]►provides that◄ functionally equivalent instruments ►may be defined in the regulation◄ as depository checks.[[1]] ►(*See* Section 602(11) of the EFA Act (12 U.S.C. 4001(11)).◄ Thus, the EFA Act is intended to apply to instruments other than those that meet the strict definition of check in section 602(7) of the EFA Act. Checks and warrants drawn by states and local governments often are used for the purposes of making unemployment compensation payments and other payments that are important to the recipients. Consequently, the [Board has expressly defined]►Regulation CC defines◄ check to include drafts drawn on the U.S. Treasury and drafts or warrants drawn by a state or a unit of general local government on itself.

[[1] Section 602(11) of the EFA Act (12 U.S.C. 4001(11)) defines "depository check" as "any cashier's check, certified check, teller's check, and any other functionally equivalent instrument as determined by the Board."]

6. The fifth category of instrument included in the definition of check is U.S. Postal Service money orders. These instruments are defined as checks because they often are used as a substitute for checks by consumers, even though money orders are not negotiable under Postal Service regulations. [The Board has not provided]►Regulation CC does not provide◄ specific rules for other types of money orders; these instruments generally are drawn on or payable through or payable at banks and are treated as checks on that basis.

7. The sixth and final category of instrument included in the definition of check is traveler's checks drawn on or payable through or at a bank. Traveler's check is defined in paragraph [(hh)] ►(vv)◄ [of this section].

[8. Finally, for the purposes of Subparts C and D, and in connection therewith, Subpart A, the definition of check includes nonnegotiable demand drafts because these instruments are often handled as cash items in the forward collection process.]

[9]►8◄. A substitute check as defined in § 229.2[(aaa)]►(rr)◄ is a check for purposes of Regulation CC and the U.C.C., even if that substitute check does not meet the requirements for legal equivalence set forth in § 229.51(a).

[10]►9◄. The definition of check does not include an instrument payable in a foreign currency (*i.e.,* other than in United States money as defined in 31 U.S.C. 5101) or a credit card draft (*i.e.,* a sales draft used by a merchant or a draft generated by a bank as a result of a cash advance), or an ACH debit transfer. The definition of check includes a check that a bank may supply to a customer as a means of accessing a credit line without the use of a credit card.

L. 229.2(l) [Reserved]

M. 229.2(m) [Check Processing Region]

[1. The EFA Act defines this term as "the geographic area served by a Federal Reserve bank check processing center or such larger area as the Board may prescribe by regulations." The Board has defined check processing region as the territory served by one of the Federal Reserve head offices, branches, or regional check processing centers. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank office. The definition of check processing region is key to determining whether a check is considered local or nonlocal.]►[Reserved]◄

N. 229.2(n) [Reserved]

O. 229.2(o) Consumer Account

1. Consumer account is defined as an account used primarily for personal, family, or household purposes. An account that does not meet the definition of consumer account is a nonconsumer account. A clearing account maintained at a bank directly by a brokerage firm is not a consumer account, even if the account is used to pay checks drawn by consumers using the funds in that account. The bank's relationship is with the brokerage firm, and the account is used by the brokerage firm to facilitate the clearing of its customers' checks. Because for purposes of Regulation CC the term account includes only deposit accounts, a consumer's revolving credit relationship or other line of credit with a bank is not a consumer account, even if the consumer draws on such credit lines by using a check. Both consumer and nonconsumer accounts are subject to the requirements of this regulation, including the requirement that funds be made available according to specific schedules and that the bank make specified disclosures of its availability policies. Section 229.18(b) (notices at branch locations) and § 229.18(e) (notice of changes in policy) apply only to consumer accounts. Section 229.13(g)(2) (one-time exception notice) and § 229.19(d) (use of calculated availability) apply only to nonconsumer accounts.

P. 229.2(p) Contractual Branch

1. When one bank arranges for another bank to accept deposits on its behalf, the second bank is a contractual branch of the first bank. For further discussion of contractual branch deposits and related disclosures, *see* § [§ 229.2(s) and] 229.19(a) of the regulation and the commentary to § [§ 229.2(s),] 229.10(c), 229.14(a), 229.16(a), 229.18(b), and 229.19(a).

Q. 229.2(q) [Reserved]

R. 229.2(r) [229.2(r) Local Check

1. Local check is defined as a check payable by or at a local paying bank, or, in the case of nonbank payors, payable through a local paying bank. A check payable by a local bank but payable through a nonlocal bank is a local check. Conversely, a check payable through a local bank but payable by a nonlocal bank is a nonlocal check. Where two banks are named on a check and neither is designated as a payable-through bank, the check is considered payable by either bank and may be considered local or nonlocal depending on the bank to which it is sent for payment. Generally, the depositary bank may rely on the routing number to determine whether a check is local or nonlocal. Appendix A includes a list of routing numbers arranged by Federal Reserve Bank Office to assist persons in determining whether or not such a check is local. If, however, a check is payable by one bank but payable through another bank, the routing number appearing on the check will be that of the payable-through bank, not the paying bank. Many credit union share drafts and certain other checks payable by banks are payable through other banks. In such cases, the routing number cannot be relied on to determine whether the check is local or nonlocal. For payable-through checks that meet the labeling requirements of § 229.36(e), the depositary bank may rely on the four-digit routing symbol of the paying bank that is printed on the face of the check as required by that section, *e.g.,* in the title plate, but not on the first four digits of the payable-through bank's routing number printed in magnetic ink in the MICR line or in fractional form, to determine whether the check is local or nonlocal.] Depositary Bank

1. The regulation uses the term depositary bank rather than the term receiving depository institution. Receiving depository institution is a term unique to the EFA Act, while depositary bank is the term used in Article 4 of the U.C.C. and Regulation J ►(12 CFR part 210). The Check 21 Act uses the term depositary bank.◄

2. A depositary bank includes the bank in which the check is first deposited. If a foreign office of a U.S. or foreign bank sends checks to its U.S. correspondent bank for forward collection, the U.S. correspondent is the depositary bank because foreign offices of banks are not included in the definition of bank.

3. If a customer deposits a check in its account at a bank, the customer's bank is the depositary bank with respect to the check. For example, if a person deposits a check into an account at a nonproprietary ATM, the bank holding the account into which the check is deposited is the depositary bank even though another bank may service the nonproprietary ATM and send the check for collection. (Under § 229.35 the depositary bank may agree with the bank servicing the nonproprietary ATM to have the servicing bank place its own indorsement on the check as the depositary bank. For the purposes of [S]►s◄ubpart C, the bank applying its indorsement as the depositary bank indorsement on the check is the depositary bank.)

4. For purposes of [S]►s◄ubpart B, a bank may act as both the depositary bank and the paying bank with respect to a check, if the check is payable by the bank in which it was deposited, or if the check is payable by a nonbank payor and payable through or at the bank in which it was deposited. A bank also is considered a depositary bank with respect to checks it receives as payee. For example, a bank is a depositary bank with respect to checks it receives for loan repayment, even though these checks are not deposited in an account at the bank. Because these checks would not be "deposited to accounts," they would not be subject to the availability or disclosure requirements of [S]►s◄ubpart B.

►5. A bank is not a depositary bank with respect to a check if the bank receives the check for deposit but then rejects the check. For example, if a bank's customer submits a check for deposit into an ATM and the bank subsequently reviewed the item and determined not to accept the item for deposit, that bank is not a depositary bank with respect to the check it rejected. Accordingly, such a bank does not take on the liabilities of a depositary bank under this part.◄

[S. 229.2(s) Local Paying Bank

1. "Local paying bank" is defined as a paying bank located in the same check-processing region as the branch, contractual branch, or proprietary ATM of the depositary bank. For example, a check deposited at a contractual branch would be deemed local or nonlocal based on the location of the contractual branch with respect to the location of the paying bank.

Examples.

a. If a check that is payable by a bank that is located in the same check processing region as the depositary bank is payable through a bank located in another check processing region, the check is considered local or nonlocal depending on the location of the bank by which it is payable even if the

check is sent to the nonlocal bank for collection.

b. The location of the depositary bank is determined by the physical location of the branch or proprietary ATM at which a check is deposited, regardless of whether the deposit is made in person, by mail, or otherwise. For example, if a branch of the depositary bank located in one check-processing region sends a check that was deposited at that branch to the depositary bank's central facility in another check-processing region, and the central facility is in the same check-processing region as the paying bank, the check is still considered nonlocal. (*See* the commentary to the definition of "paying bank.")

c. If a person deposits a check to an account by mailing or otherwise sending the check to a facility or office that is not a bank, the check is considered local or nonlocal depending on the location of the bank whose indorsement appears on the check as the depositary bank.❱

►S. 229.2(s) Electronic Collection Item

1. Banks often enter into agreements under which a check may be transferred or presented by sending an electronic image of the check and electronic information related to the check (*e.g.,* MICR-line information). The terms of the agreements may vary. If, however, an electronic collection item satisfies all the requirements set forth in § 229.2(s), then the provisions of subpart C apply to the electronic collection item as if it were a check subject to that subpart.

a. The agreement to receive an electronic collection item may be either bilateral or through a Federal Reserve Bank operating circular, clearinghouse rule, or other interbank agreement. (*See* UCC § 4–110).

b. The electronic image of the front and back of the original check or substitute check as well as electronic information related to the check must be sufficient to create a substitute check. Electronic information related to the check includes information contained in the MICR line of the check prior to truncation. Some banks' agreements to receive items electronically may not require an electronic image of the front and back of an original check. Electronic items received under these agreements would not be electronic collection items under this part.

c. ANS X9.100–187 is the most prevalent industry standard for electronic images and information that will enable a bank to create a substitute check. Multiple standards may, however, exist that would enable a bank to create a substitute check from an electronic image and information. Accordingly, the parties may agree to send and receive checks as electronic images and information that conform to a different standard.

d. Electronic collection items that contain images of the front and back of a substitute check also are electronic representations of a substitute check (*see* § 229.2(hh)). Not all electronic representations of substitute checks, however, are electronic collection items. To be an electronic collection item, the electronic representation of a substitute check must satisfy the requirements for electronic collection items—it must contain sufficient information to create a substitute check and it must conform to ANS X9.100–187, unless the parties agree to a different standard.◄

T. 229.2(t) Electronic Payment

1. Electronic payment is defined to mean a wire transfer as defined in § 229.2❰(ll)❱►(bbb)◄ or an ACH credit transfer ►as defined in § 229.2(b)◄. The EFA Act requires that funds deposited by wire transfer be made available for withdrawal on the business day following deposit but expressly leaves the definition of the term wire transfer to the ❰Board❱►regulation◄. Because ACH credit transfers ❰frequently involve important consumer payments, such as wages❱►pose little risk of return to the depositary bank◄, the regulation requires that funds deposited by ACH credit transfers be available for withdrawal on the business day following deposit.

2. ACH debit transfers, even though they may be transmitted electronically, are not defined as electronic payments because the receiver of an ACH debit transfer has the right to return the transfer, which would reverse the credit given to the originator. Thus, ACH debit transfers are more like checks than wire transfers. Further, bank customers that receive funds by originating ACH debit transfers are primarily large corporations, which generally would be able to negotiate with their banks for prompt availability.

3. A point-of-sale transaction would not be considered an electronic payment unless the transaction was effected by means of an ACH credit transfer or wire transfer.

►U. 229.2(u) Electronic Presentment Point

1. The term "electronic presentment point" means the electronic address that a paying bank has designated as the place to which electronic collection items be presented. This address may be either an e-mail address or other electronic address.◄

►V. 229.2(v) Electronic Return

1. Many paying banks have entered into agreements with returning banks, depositary banks, clearinghouses, or other parties to return checks electronically. For purposes of subpart C, the term "electronic return" means an electronic image of and electronic information related to a check the paying bank determines not to pay and that is sufficient for a subsequent bank to create a substitute check (*See* § 229.2(rr) and accompanying commentary). To be sufficient to create a substitute check, the electronic image must include an image of both the front and back of the check. The electronic information, typically contained in an electronic record accompanying the electronic image, must include information from the MICR line of the check at the time it was truncated. The electronic record may include information in addition to MICR-line related information.

2. ANS X9.100–187 is the most prevalent industry standard for electronic images and information that will enable a subsequent bank to create a substitute check (i.e., in accordance with ANS X9.100–140). Similar to electronic presentment, multiple standards may exist that would enable a bank to create a substitute check from an electronic image and information. Accordingly, the parties may agree to return checks as electronic images and information that conform to a different standard. For example, the depositary bank may agree to receive the electronic image and information sufficient for creating a substitute check in a .pdf, rather than in accordance with ANS X9.100–187.

3. An electronic image and information related to a check the paying bank determines not to pay is subject to the provisions of subpart C only if the depositary bank has agreed to receive the electronic return in accordance with § 229.32(a) (*See* § 229.32(a) and accompanying commentary).

4. Electronic returns that contain images of the front and back of a substitute check also are electronic representations of a substitute check (*See* § 229.2(hh)). Not all electronic representations of substitute checks, however, are electronic returns. To be an electronic return, the electronic representation of a substitute check must satisfy the requirements for electronic returns—it must contain sufficient information to create a substitute check and must conform to ANS X9.100–187.◄

►W. 229.2(w) Electronic Return Point

1. The term "electronic return point" means the e-mail address or other electronic address that a depositary bank has designated as the place to which electronic returns must be delivered.

2. The electronic return point may be different from the electronic presentment point designated by a bank for presentment of electronic collection items.◄

X. 229.2(x) [Reserved]

Y. 229.2(y) Forward Collection

1. Forward collection is defined to mean the process by which a bank sends a check to the paying bank for collection, including sending the check to an intermediary collecting bank for settlement, as distinguished from the process by which the check is returned unpaid. Noncash collections are not included in the term forward collection.

Z. 229.2(z) Good Faith

1. This definition of good faith derives from U.C.C. 3–103(a)(4).

AA. 229.2(aa) [Reserved]

BB. 229.2(bb) Interest Compensation

1. This calculation of interest compensation derives from U.C.C. 4A–506(b). (*See* §§ 229.34❰(e)❱►(f)◄ and 229.36❰(f)❱►(d)◄.)

CC. 229.2(cc) ❰MICR Line❱ ►Magnetic ink character recognition line or MICR line◄

1. Information in the MICR line of a check must be printed in accordance with ANS X9.13 for original checks and ANS X9.100–140 for substitute checks. These standards could vary the requirements for printing the MICR line, such as by indicating circumstances under which the use of magnetic ink is not required.

DD. 229.2(dd) Merger Transaction

1. Merger transaction is a term used in ❰S❱►s◄ubparts B and C in connection with

transition rules for merged banks. It encompasses mergers, consolidations, and purchase/assumption transactions of the type that usually must be approved under the Bank Merger Act (12 U.S.C. 1828(c)) or similar statutes; it does not encompass acquisitions of a bank under the Bank Holding Company Act (12 U.S.C. 1842) where an acquired bank maintains its separate corporate existence.

2. Regulation CC adopts a one-year transition period for banks that are party to a merger transaction during which the merged banks will continue to be treated as separate entities. (*See* §§ 229.19(g) and 229.40.)

EE. 229.2(ee) Noncash Item

1. The EFA Act defines the term check to exclude noncash items, and defines noncash items to include checks to which another document is attached, checks accompanied by special instructions, or any similar item classified as a noncash item in the ❚Board's❚ regulation. To qualify as a noncash item, an item must be handled as such and may not be handled as a cash item by the depositary bank.

2. The regulation's definition of noncash item also includes checks that consist of more than a single thickness of paper (except checks that qualify for handling by automated check processing equipment❚, *e.g.* those placed in carrier envelopes❚) and checks that have not been preprinted or post-encoded in magnetic ink with the paying bank's routing number, as well as checks with documents attached or accompanied by special instructions. (In the context of this definition, paying bank refers to the paying bank as defined for purposes of ❚S❚►s◄ubpart C.)

3. A check that has been preprinted or post-encoded with a routing number that has been retired (*e.g.,* because of a merger) for at least three years is a noncash item unless the current number is added for processing purposes ❚by placing the check in an encoded carrier envelope or adding a strip to the check❚.

4. Checks that are accompanied by special instructions are also noncash items. For example, a person concerned about whether a check will be paid may request the depositary bank to send a check for collection as a noncash item with an instruction to the paying bank to notify the depositary bank promptly when the check is paid or dishonored.

5. For purposes of forward collection, a copy of a check is neither a check nor a noncash item, but may be treated as either. For purposes of return, a copy is generally a notice in lieu of return. (*See* §§ 229.30❚(f)❚►(e)◄ and 229.31❚(f)❚►(e)◄.)

FF. 229.2(ff) [Reserved]

GG. 229.2(gg) Original Check

1. The definition of original check distinguishes the first paper check signed or otherwise authorized by the drawer to effect a particular payment transaction from a substitute check or other paper or electronic representation that is derived from an original check or substitute check. There is only one original check for any particular payment transaction. However, multiple substitute checks could be created to represent that original check at various points in the check collection and return process.

HH. 229.2(hh) Paper or Electronic Representation of a Substitute Check

1. Receipt of a paper or electronic representation of a substitute check does not trigger indemnity or expedited recredit rights, although the recipient nonetheless could have a warranty claim or a claim under other check law with respect to that document or the underlying payment transaction. A paper or electronic representation of a substitute check would include a representation of a substitute check that was drawn on an account, as well as a representation of a substitute traveler's check, credit card check, or other item that meets the substitute check definition. The following examples illustrate the scope of the definition.

Examples.

a. A bank receives electronic presentment of a substitute check that has been converted to electronic form and charges the customer's account for that electronic item. The periodic account statement that the bank provides to the customer includes information about the electronically-presented substitute check in a line-item list describing all the checks the bank charged to the customer's account during the previous month. The electronic file that the bank received for presentment and charged to the customer's account would be an electronic representation of a substitute check, and the line-item appearing on the customer's account statement would be a paper representation of a substitute check.

b. A paying bank receives and settles for a substitute check and then realizes that its settlement was for the wrong amount. The paying bank sends an adjustment request to the presenting bank to correct the error. The adjustment request is not a paper or electronic representation of a substitute check under the definition because it is not being handled for collection or return as a check. Rather, it is a separate request that is related to a check. As a result, no substitute check warranty, indemnity, or expedited recredit rights attach to the adjustment.

►2. An electronic representation of a substitute check also may be an electronic collection item or an electronic return if the electronic representation of the substitute check otherwise satisfies their requirements (*see* § 229.2(s) and (v)).

Example.

A bank receives electronic presentment of a substitute check that has been converted to electronic form. If the electronic file that the bank receives for presentment contains an electronic image of and information related to the substitute check that are sufficient for creating a substitute check and the electronic image and information conform to ANS X9.100–187, or another format to which the parties agree, that electronic file would be an electronic collection item in addition to an electronic representation of a substitute check.◄

II. 229.2(ii) Paying Bank

1. The regulation uses this term in lieu of the EFA Act's "originating depository institution." ►The Check 21 Act also uses the term "paying bank."◄ For purposes of all subparts of Regulation CC, the term paying bank includes the bank by which a check is payable, the payable-at bank to which a check is sent, or, if the check is payable by a nonbank payor, the bank through which the check is payable and to which it is sent for payment or collection. For purposes of subparts C and D, the term paying bank also includes the payable-through bank and the bank whose routing number appears on the check, regardless of whether the check is payable by a different bank, provided that the check is sent for payment or collection to the payable through bank or the bank whose routing number appears on the check.

2. Under §§ 229.30►(a)◄ ❚and 229.36(a)❚, a bank designated as a payable-through bank or payable-at bank and to which the check is sent for payment or collection is responsible for the expedited return of checks ❚and notice of nonpayment requirements of❚►under◄ ❚S❚►s◄ubpart C. The payable-through or payable-at bank may contract with the payor with respect to its liability in discharging these responsibilities. ❚The Board believes that the EFA Act makes a clear connection between availability and the time it takes for checks to be cleared and returned.❚ Allowing the payable-through bank additional time to forward checks to the payor and await return or pay instructions from the payor would delay the return of these checks, increasing the risks to depositary banks. Subpart C places on payable-through and payable-at banks the requirements of expeditious return based on the time the payable-through or payable-at bank received the check for forward collection.

3. If a check is sent for forward collection based on the routing number, the bank associated with the routing number is a paying bank for the purposes of ❚S❚►s◄ubparts C and D requirements❚, including notice of nonpayment,❚ even if the check is not drawn by a customer of that bank or the check is fraudulent.

4. The phrase "and to which ❚the check❚ is sent for payment or collection" includes sending not only the physical check, but information regarding the check under a truncation arrangement.

5. Federal Reserve Banks and Federal Home Loan Banks are also paying banks under all subparts of the regulation with respect to checks payable by them, even though such banks are not defined as banks for purposes of ❚S❚►s◄ubpart B.

6. In accordance with the Check 21 Act, for purposes of subpart D and, in connection therewith, subpart A, paying bank includes the Treasury of the United States or the United States Postal Service with respect to a check payable by that entity and sent to that entity for payment or collection, even though the Treasury and Postal Service are not defined as banks for purposes of subparts B and C. Because the Federal Reserve Banks act as fiscal agents for the Treasury and the U.S. Postal Service and in that capacity are designated as presentment locations for

Treasury checks and U.S. Postal Service money orders, a Treasury check or U.S. Postal Service money order presented to a Federal Reserve Bank is considered to be presented to the Treasury or U.S. Postal Service, respectively.

JJ. 229.2(jj) [Reserved]

KK. 229.2(kk) Proprietary ATM

[1. All deposits at nonproprietary ATMs are treated as deposits of nonlocal checks, and deposits at proprietary ATMs generally are treated as deposits at banking offices. The Conference Report on the EFA Act indicates that the special availability rules for deposits received through nonproprietary ATMs are provided because "nonproprietary ATMs today do not distinguish among check deposits or between check and cash deposits" (H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987)). Thus, a deposit of any combination of cash and checks at a nonproprietary ATM may be treated as if it were a deposit of nonlocal checks, because the depositary bank does not know the makeup of the deposit and consequently is unable to place different holds on cash, local check, and nonlocal check deposits made at the ATM.]

►1.◄[2.] A colloquy between Senators Proxmire and Dodd during the floor debate on the Competitive Equality Banking Act (133 Cong. Rec. S11289 (Aug. 4, 1987)) indicates that whether a bank operates the ATM is the primary criterion in determining whether the ATM is proprietary to that bank. Because a bank should be capable of ascertaining the composition of deposits made to an ATM operated by that bank, an exception to the availability schedules is not warranted for these deposits. If more than one bank meets the "owns or operates" criterion, the ATM is considered proprietary to the bank that operates it. For the purpose of this definition, the bank that operates an ATM is the bank that puts checks deposited into the ATM into the forward collection stream. An ATM owned by one or more banks, but operated by a nonbank servicer, is considered proprietary to the bank or banks that own it.

►2.◄[3.] The EFA Act also includes location as a factor in determining whether an ATM that is either owned or operated by a bank is proprietary to that bank. The definition of proprietary ATM includes an ATM located on the premises of the bank, either inside the branch or on its outside wall, regardless of whether the ATM is owned or operated by that bank. Because the EFA Act also defines a proprietary ATM as one that is "in close proximity" to the bank, the regulation defines an ATM located within 50 feet of a bank to be proprietary to that bank unless it is identified as being owned or operated by another entity. The [Board believes that the] statutory proximity test was designed to apply to situations where it would appear to the depositor that the ATM is run by his or her bank, because of the proximity of the ATM to the bank. [The Board believes that a]►A◄n ATM located within 50 feet of a banking office would be presumed proprietary to that bank unless it is clearly identified as being owned or operated by another entity.

LL. 229.2(ll) Qualified Returned Check

1. Subpart C requires the paying bank and returning bank(s) to return checks in an expeditious manner ►under certain circumstances◄. [The banks may meet this responsibility by returning a check to the depositary bank by the same general means used for forward collection of a check from the depositary bank to the paying bank. One]►While the primary◄ way to speed the return process is to ►send the return electronically, a bank also could◄ prepare the returned check for automated ►paper◄ processing. [Returned checks can be automated by either the paying bank or a returning bank by placing the return in a carrier envelope or by placing a strip on the bottom of the return, and encoding the envelope or strip with the routing number of the depositary bank, the amount of the check, and a special return identifier.] Qualified returned checks are identified by placing a "2" in the case of an original check (or a "5" in the case of a substitute check) in position 44 of the qualified-return MICR line as a return identifier in accordance with American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (hereinafter "ANS X9.13") for original checks or American National Standard Specifications for an Image Replacement Document—IRD, X9.100–140 (hereinafter "ANS X9.100–140") for substitute checks. ►(*See* § 229.2(w) and accompanying commentary for a discussion of standards for electronic returns.)◄

2. Generally, under the standard of care imposed by § 229.38, a paying ►bank◄ or returning bank would be liable for any damages incurred due to misencoding of the routing number, the amount of the check, or return identifier on a qualified returned check unless the error was due to problems with the depositary bank's indorsement. (*See* also discussion of § 229.38(c).) A qualified returned check that contains an encoding error would still be a qualified returned check for purposes of the regulation.

[3. A qualified returned check need not contain the elements of a check drawn on the depositary bank, such as the name of the depositary bank. Because indorsements and other information on carrier envelopes or strips will not appear on a returned check itself, banks will wish to retain carrier envelopes and/or microfilm or other records of carrier envelopes or strips with their check records.]

MM. 229.2(mm) Reconverting Bank

1. A substitute check is "created" when and where a paper reproduction of an original check that meets the requirements of § 229.2[(pp)]►(rr)◄ is physically printed. A bank is a reconverting bank if it creates a substitute check directly or if another person by agreement creates a substitute check on the bank's behalf. A bank also is a reconverting bank if it is the first bank that receives a substitute check created by a nonbank and transfers, presents, or returns that substitute check or, in lieu thereof, the first paper or electronic representation of such substitute check.

Examples.

a. Bank A, by agreement, sends an [electronic check file] ►electronic image and information related to the paper check◄ for collection to Bank B. Bank B chooses to use that file to print a substitute check that meets the requirements of § 229.2[(pp)]►(rr)◄. Bank B is the reconverting bank as of the time it prints the substitute check.

b. Company A, which is not a bank, by agreement receives check information electronically from Bank A. Bank A becomes the reconverting bank when Company A prints a substitute check on behalf of Bank A in accordance with that agreement.

c. A depositary bank's customer, which is a nonbank business, receives a check for payment, truncates that original check, and creates a substitute check to deposit with its bank. The depositary bank receives that substitute check from its customer and is the first bank to handle the substitute check. The depositary bank becomes the reconverting bank as of the time that it transfers or presents the substitute check (or in lieu thereof the first paper or electronic representation of the substitute check) for forward collection.

d. A bank is the payable-through bank for checks that are drawn on a nonbank payor, which is the bank's customer. When the customer decides not to pay a check that is payable through the bank, the customer creates a substitute check for purposes of return. The payable-through bank becomes the reconverting bank when it returns the substitute check (or in lieu thereof the first paper or electronic representation of the substitute check) to a returning bank or the depositary bank.

e. A paying bank returns a substitute check to the depositary bank, which in turn gives that substitute check back to its nonbank customer. That customer then redeposits the substitute check for collection at a different bank. Because the substitute check was already transferred by a bank, the second depositary bank does not become a reconverting bank when it transfers or presents that substitute check for collection.

2. In some cases there will be one or more banks between the truncating bank and the reconverting bank.

Example.

A depositary bank truncates the original check and sends an electronic representation of the original check for collection to an intermediary bank. The intermediary bank sends the electronic representation of the original check to the presenting bank, which creates a substitute check to present to the paying bank. The presenting bank is the reconverting bank.

3. A check could move from electronic form to substitute check form several times during the collection and return process. It therefore is possible that there could be multiple substitute checks, and thus multiple reconverting banks, with respect to the same underlying payment.

NN. 229.2(nn) Remotely Created Check

1. A check authorized by a consumer over the telephone that is not created by the paying bank and bears a legend on the signature line, such as "Authorized by Drawer," is an example of a remotely created check. A check that bears the signature applied, or purported to be applied, by the person on whose account the check is drawn

is not a remotely created check. A typical forged check, such as a stolen personal check fraudulently signed by a person other than the drawer, is not covered by the definition of a remotely created check.

2. The term signature as used in this definition has the meaning set forth at U.C.C. 3–401. The term "applied by" refers to the physical act of placing the signature on the check.

3. The definition of a "remotely created check" differs from the definition of a "remotely created consumer item" under the U.C.C. A "remotely created check" may be drawn on an account held by a consumer, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization. A "remotely created consumer item" under the U.C.C., however, must be drawn on a consumer account.

4. Under Regulation CC (12 CFR part 229), the term "check" includes a negotiable demand draft drawn on or payable through or at an office of a bank. In the case of a "payable through" or "payable at" check, the signature of the person on whose account the check is drawn would include the signature of the payor institution or the signatures of the customers who are authorized to draw checks on that account, depending on the arrangements between the "payable through" or "payable at" bank, the payor institution, and the customers.

5. The definition of a remotely created check includes a remotely created check that has been reconverted to a substitute check.

OO. 229.2(oo) Returning Bank

1. Returning bank is defined to mean any bank (excluding the paying bank and the depositary bank) handling a returned check. A returning bank may or may not be a bank that handled the returned check in the forward collection process. A returning bank includes a bank that agrees to handle a returned check for expeditious return to the depositary bank under § 229.31(a). A returning bank is also a collecting bank for the purpose of a collecting bank's duty to exercise ordinary care under U.C.C. 4–202(b) and is analogous to a collecting bank for purposes of final settlement. (See Commentary to § 229.35(b).)

PP. 229.2(pp) Routing Number

1. Each bank is assigned a routing number by an agent of the American Bankers Association. The routing number takes two forms—a fractional form and a nine-digit form. A paying bank is identified by both the fractional form routing number (which normally appears in the upper right hand corner of the check) and the nine-digit form. The nine-digit routing number of the paying bank generally is printed in magnetic ink near the bottom of the check (the MICR [strip]►line◄; *see* ANS[I] X9.13[–1983]). ►Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable through bank, not the payor bank. In the case of an electronic collection item, the routing number of the paying bank is contained in the electronic image of the check (in fractional form or nine-digit form) or in the electronic information related to the check (in nine-digit form).◄ Subpart C requires depositary banks►,◄ [and] subsequent collecting banks►, and returning banks◄ to place their routing numbers in nine-digit form in their indorsements.

QQ. 229.2(qq) [Reserved]

RR. 229.2(rr) Substitute Check

1. "A paper reproduction of an original check" could include a reproduction created directly from the original check or a reproduction of the original check that is created from some other source that contains an image of the original check, such as an electronic representation of an original check or substitute check, or a previous substitute check.

2. Because a substitute check must be a piece of paper, an electronic file or electronic check image that has not yet been printed in accordance with the substitute check definition is not a substitute check.

3. Because a substitute check must be a representation of a check, a paper reproduction of something that is not a check cannot be a substitute check. For example, a savings bond or a check drawn on a non-U.S. branch of a foreign bank cannot be reconverted to a substitute check.

4. As described in § 229.51(b) and the commentary thereto, a reconverting bank is required to ensure that a substitute check contains all indorsements applied by previous parties that handled the check in any form. Therefore, the image of the original check that appears on the back of a substitute check would include indorsements that were physically applied to the original check before an image of the original check was captured. An indorsement that was applied physically to the original check after an image of the original check was captured would be conveyed as an electronic indorsement (see paragraph 3 of the commentary to § 229.35(a)). The back of the substitute check would contain a physical representation of any indorsements that were applied electronically to the check after an image of the check was captured but before creation of the substitute check.

Example.

Bank A, which is the depositary bank, captures an image of an original check, indorses it electronically and, by agreement, transmits to Bank B an electronic image of the check accompanied by the electronic indorsement. Bank B then creates a substitute check to send to Bank C. The back of the substitute check created by Bank B must contain a representation of the indorsement previously applied electronically by Bank A and Bank B's own indorsement. (For more information on indorsement requirements, *see* § 229.35, appendix D, and the commentary thereto.)

5. Some substitute checks will not be created directly from the original check, but rather will be created from a previous substitute check. The back of a subsequent substitute check will contain an image of the full length of the back of the previous substitute check. ANS X9.100–140 requires preservation of the full length of the back of the previous substitute check in order to preserve previous indorsements and reconverting bank identifications. By contrast, the front of a subsequent substitute check will not contain an image of the entire previous substitute check. Rather, the image field of the subsequent substitute check will contain the image of the front of the original check that appeared on the previous substitute check at the time the previous substitute check was converted to electronic form. The portions of the front of the subsequent substitute check other than the image field will contain information applied by the subsequent reconverting bank, such as its reconverting bank identification, the MICR line, the legal equivalence legend, and optional security information.

Examples.

a. The back of a subsequent substitute check would contain the following indorsements, all of which would be preserved through the image of the back of the previous substitute check: (1) The indorsements that were applied physically to the original check before an image of the original check was captured; (2) a physical representation of indorsements that were applied electronically to the original check after an image of the original check was captured but before creation of the first substitute check; and (3) indorsements that were applied physically to the previous substitute check. In addition, the reconverting bank for the subsequent substitute check must overlay onto the back of that substitute check a physical representation of any indorsements that were applied electronically after the previous substitute check was converted to electronic form but before creation of the subsequent substitute check.

b. Because information could have been physically added to the image of the front of the original check that appeared on the previous substitute check, the original check image that appears on the front of a subsequent substitute check could contain information in addition to that which appeared on the original check at the time it was truncated.

6. The MICR line applied to a substitute check must contain information in all fields of the MICR line that were encoded on the original check at any time before an image of the original check was captured. This includes all the MICR-line information that was preprinted on the original check, plus any additional information that was added to the MICR line before the image of the original check was captured (for example, the amount of the check). The information in each field of the substitute check's MICR line must be the same information as in the corresponding field of the MICR line of the original check, except as provided by ANS X9.100–140 (unless the Board by rule or order determines that a different standard applies). Industry standards may not, however, vary the requirement that a substitute check at the time of its creation must bear a full-field MICR line.

7. ANS X9.100–140 provides that a substitute check must have a "4" in position 44 and that a qualified returned substitute check must have a "4" in position 44 of the forward-collection MICR line as well as a "5" in position 44 of the qualified return MICR line. The "4" and "5" indicate that the

document is a substitute check so that the size of the check image remains constant throughout the collection and return process, regardless of the number of substitute checks created that represent the same original check (*see also* §§ 229.30(a)【(2)】►(3)◄ and 229.31(a)【(2)】►(3)◄ and the commentary thereto regarding requirements for qualified returned substitute checks). An original check generally has a blank position 44 for forward collection. Because a reconverting bank must encode position 44 of a substitute check's forward collection MICR line with a "4," the reconverting bank must vary any character that appeared in position 44 of the forward-collection MICR line of the original check. A bank that misencodes or fails to encode position 44 at the time it attempts to create a substitute check has failed to create a substitute check. A bank that receives a properly-encoded substitute check may further encode that item but does so subject to the encoding warranties in Regulation CC and the U.C.C.

8. A substitute check's MICR line could contain information in addition to the information required at the time the substitute check is created. For example, if the amount field of the original check was not encoded and the substitute check therefore did not, when created, have an encoded amount field, the MICR line of the substitute check later could be amount-encoded.

9. A bank may receive a substitute check that contains a MICR-line variation but nonetheless meets the MICR-line replication requirements of § 229.2【(aaa)(2)】►(rr)(2)◄ because that variation is permitted by ANS X9.100–140. If such a substitute check contains a MICR-line error, a bank that receives it may, but is not required to, repair that error. Such a repair must be made in accordance with ANS X9.100–140 for repairing a MICR line, which generally allows a bank to correct an error by applying a strip that may or may not contain information in all fields encoded on the check's MICR line. A bank's repair of a MICR-line error on a substitute check is subject to the encoding warranties in Regulation CC and the U.C.C.

10. A substitute check must conform to all the generally applicable industry standards for substitute checks set forth in ANS X9.100–140, which incorporates other industry standards by reference. Thus, multiple substitute check images contained on the same page of an account statement are not substitute checks.

SS. 229.2(ss) Sufficient Copy and Copy

1. A copy must be a paper reproduction of a check. An electronic image therefore is not a copy or a sufficient copy. However, if a customer has agreed to receive such information electronically, a bank that is required to provide an original check or sufficient copy may satisfy that requirement by providing an electronic image in accordance with § 229.58 and the commentary thereto.

2. A bank under § 229.53(b)(3) may limit its liability for an indemnity claim and under §§ 229.54(e)(2) and 229.55(c)(2) may respond to an expedited recredit claim by providing the claimant with a copy of a check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or that otherwise is sufficient to determine the validity of the claim against the bank.

Examples.

a. A copy of an original check that accurately represents all the information on the front and back of the original check as of the time of truncation would constitute a sufficient copy if that copy resolved the claim. For example, if resolution of the claim required accurate payment and indorsement information, an accurate copy of the front and back of a legible original check (including but not limited to a substitute check) would be a sufficient copy.

b. A copy of the original check that does not accurately represent all the information on both the front and back of the original check also could be a sufficient copy if such copy contained all the information necessary to determine the validity of the relevant claim. For instance, if a consumer received a substitute check that contained a blurry image of a legible original check, the consumer might seek an expedited recredit because his or her account was charged for $1,000, but he or she believed that the check was written for only $100. If the amount that appeared on the front of the original check was legible, an accurate copy of only the front of the original check that showed the amount of the check would be sufficient to determine whether or not the consumer's claim regarding the amount of the check was valid.

TT. 229.2(tt) Teller's Check

1. Teller's check is defined in the EFA Act to mean a check issued by a depository institution and drawn on another depository institution. The definition in the regulation includes not only checks drawn by a bank on another bank, but also checks payable through or at a bank. This would include checks drawn on a nonbank, as long as the check is payable through or at a bank. The definition does not include checks that are drawn by a nonbank on a nonbank even if payable through or at a bank. The definition includes checks provided to a customer of the bank in connection with customer deposit account activity, such as account disbursements and interest payments. The definition also includes checks acquired from a bank by a noncustomer for remittance purposes, such as certain loan disbursement checks. The definition excludes checks used by the bank to pay employees or vendors and checks issued by the bank in connection with a payment service, such as a payroll or a bill-paying service. Teller's checks generally are sold by banks to substitute the bank's credit for the customer's credit and thereby enhance the collectibility of the checks. A check issued in connection with a payment service generally is provided as a convenience to the customer rather than as a guarantee of the check's collectibility. In addition, such checks are often more difficult to distinguish from other types of checks than are teller's checks as defined by this regulation.

UU. 229.2(uu) Transfer and Consideration

1. Under §§ 229.52 and 229.53, a bank is responsible for the warranties and indemnity when it transfers, presents, or returns a substitute check (or a paper or electronic representation thereof) for consideration. Drawers and other nonbank persons that receive checks from a bank are not transferees that receive consideration as those terms are defined in the U.C.C. However, the Check 21 Act clearly contemplates that such nonbank persons that receive substitute checks (or representations thereof) from a bank will receive the warranties and indemnity from all previous banks that handled the check. To ensure that these parties are covered by the substitute check warranties and indemnity in the manner contemplated by the Check 21 Act, § 229.2【(ccc)】►(uu)◄ incorporates the U.C.C. definitions of the terms transfer and consideration by reference and ►for purposes of subpart D◄ expands those definitions to cover a broader range of situations. Delivering a check to a nonbank that is acting on behalf of a bank (such as a third-party check processor or presentment point) is a transfer of the check to that bank. ►In subpart C, the terms transfer and consideration have the meaning that they have in the UCC.◄

Examples.

a. A paying bank pays a substitute check and then provides that paid substitute check (or a representation thereof) to a drawer with a periodic statement. Under the expanded definitions, the paying bank thereby transfers the substitute check (or representation thereof) to the drawer for consideration and makes the substitute check warranties described in § 229.52. A drawer that suffers a loss due to receipt of a substitute check may have warranty, indemnity, and, if the drawer is a consumer, expedited recredit rights under the Check 21 Act and subpart D. A drawer that suffers a loss due to receipt of a paper or electronic representation of a substitute check would receive the substitute check warranties but would not have indemnity or expedited recredit rights.

b. The expanded definitions also operate such that a paying bank that pays an original check (or a representation thereof) and then creates a substitute check to provide to the drawer with a periodic statement transfers the substitute check for consideration and thereby provides the warranties and indemnity.

c. The expanded definitions ensure that a bank that receives a returned check in any form and then provides a substitute check to the depositor gives the substitute check warranties and indemnity to the depositor.

d. The expanded definitions apply to substitute checks representing original checks that are not drawn on deposit accounts, such as checks used to access a credit card or a home equity line of credit.

VV. 229.2(vv) Traveler's Check

1. The EFA Act and regulation require that traveler's checks be treated as cashier's, teller's, or certified checks when a new depositor opens an account. (*See* § 229.13(a); 12 U.S.C. 4003(a)(1)(C).) The EFA Act does not define traveler's check.

2. One element of the definition states that a traveler's check is "drawn on or payable through or at a bank." Sometimes traveler's checks that are not issued by banks do not

have any words on them identifying a bank as drawee or paying agent, but instead bear unique routing numbers with an 8000 prefix that identifies a bank as paying agent.

3. Because a traveler's check is payable by, at, or through a bank, it is also a check for purposes of this regulation. When not subject to the next-day availability requirement for new accounts, a traveler's check should be treated as a [local or nonlocal] check[depending on the location of the paying bank] ►under § 229.12◄. [The depositary bank may rely on the designation of the paying bank by the routing number to determine whether local or nonlocal treatment is required.]

WW. 229.2(ww) Truncate

1. Truncate means to remove the original check from the forward collection or return process and to send in lieu of the original check either a substitute check or, by agreement, information relating to the original check. Truncation does not include removal of a substitute check from the check collection or return process.

XX. 229.2(xx) Truncating Bank

1. A bank is a truncating bank if it truncates an original check or if it is the first bank to transfer, present, or return another form of an original check that was truncated by a person that is not a bank.

Example.

a. A bank's customer that is a nonbank business receives a check for payment and deposits either a substitute check or an electronic representation of the original check with its depositary bank instead of the original check. That depositary bank is the truncating bank when it transfers, presents, or returns the substitute check or electronic representation in lieu of the original check. That bank also would be the reconverting bank if it were the first bank to transfer, present, or return a substitute check that it received from (or created from the information given by) its nonbank customer [(*see* § 229.2 (yy) and the commentary thereto)].

2. A truncating bank does not make the subpart D warranties and indemnity unless it also is the reconverting bank. Therefore, a bank that truncates the original check and sends an electronic file to a collecting bank does not provide subpart D protections to the recipient of that electronic item. However, a recipient of an electronic item may protect itself against losses associated with that item by agreement with the truncating bank.

YY. 229.2(yy) Uniform Commercial Code

1. Uniform Commercial Code is defined as the version of the Code adopted by the individual states. For purposes of uniform citation, all citations to the U.C.C. in this part refer to the Official Text as approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

ZZ. 229.2(zz) [Reserved]

AAA. 229.2(aaa) Unit of General Local Government

1. Unit of general local government is defined to include a city, county, parish, town, township, village, or other general purpose political subdivision of a state. The term does not include special purpose units, such as school districts, water districts, or Indian nations.

BBB. 229.2(bbb) Wire Transfer

1. The EFA Act [delegates to the Board the authority to define] ►permits◄ the term ►"◄wire transfer[.]►" to be defined by regulation.◄ The regulation defines wire transfer as an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary, upon receipt or on a day stated in the order, that is transmitted by electronic or other means over certain networks or on the books of banks and that is used primarily to transfer funds between [commercial] ►nonconsumer◄ accounts. "Unconditional" means that no condition, such as presentation of documents, must be met before the bank receiving the order is to make payment. A wire transfer may be transmitted by electronic or other means. "Electronic means" include computer-to-computer links, on-line terminals, [telegrams (including TWX, TELEX, or similar methods of communication),] telephone calls, or other similar methods. ►The◄ Fedwire ►Funds Service◄ (the Federal Reserve's wire transfer network), CHIPS (Clearing House Interbank Payments System, operated by [t]►T◄he [New York] Clearing House), and book transfers among banks or within one bank are covered by this definition. Credits for credit and debit card transactions are not wire transfers. The term wire transfer excludes electronic fund transfers as that term is defined by the Electronic Fund Transfer Act.

III. Administrative Liability and Enforcement [Reserved]

IV. Section 229.10—Next-Day Availability

A. Business Days and Banking Days

1. This section, as well as other provisions of this subpart governing the availability of funds, provides that funds must be made available for withdrawal not later than a specified number of business days following the banking day on which the funds are deposited. Thus, a deposit is considered made only on a banking day, i.e., a day that the bank is open to the public for carrying on substantially all of its banking functions. For example, if a deposit is made at an ATM on a Saturday, Sunday, or other day on which the bank is closed to the public, the deposit is considered received on that bank's next banking day.

2. Nevertheless, business days are used to determine the number of days following the banking day of deposit that funds must be available for withdrawal. For example, if a deposit of a [local] check were made on a Monday, the availability schedule ►generally◄ requires that funds be available for withdrawal on the second business day after deposit. Therefore, funds must be made available on Wednesday regardless of whether the bank was closed on Tuesday for other than a standard legal holiday as specified in the definition of business day.

B. 229.10(a) Cash Deposits

1. This paragraph implements the EFA Act's requirement for next-day availability for cash deposits to accounts at a depositary bank "staffed by individuals employed by such institution."[[2]] Under this paragraph, cash deposited in an account at a staffed teller station on a Monday must become available for withdrawal by the start of business on Tuesday. It must become available for withdrawal by the start of business on Wednesday if it is deposited by mail, at a proprietary ATM, or by other means other than at a staffed teller station.

►2. Nothing in the EFA Act or this regulation affects terms of account arrangements, such as negotiable order of withdrawal accounts, which may require prior notice of withdrawal. (*See* 12 CFR 204.2(e)(2).)◄

[[2] Nothing in the EFA Act or this regulation affects terms of account arrangements, such as negotiable order of withdrawal accounts, which may require prior notice of withdrawal. (*See* 12 CFR 204.2(e)(2).)]

C. 229.10(b) Electronic Payments

1. The EFA Act provides next-day availability for funds received for deposit by wire transfer. The regulation uses the term electronic payment, rather than wire transfer, to include both wire transfers and ACH credit transfers under the next-day availability requirement. (*See* discussion of definitions of [automated clearinghouse] ►ACH credit transfer◄, electronic payment, and wire transfer in § 229.2.)

2. The EFA Act requires that funds received by wire transfer be available for withdrawal not later than the business day following the day a wire transfer is received. This paragraph clarifies what constitutes receipt of an electronic payment. For the purposes of this paragraph, a bank receives an electronic payment when the bank receives both payment in finally collected funds and the payment instructions indicating the customer accounts to be credited and the amount to be credited to each account. For example, in the case of ►a◄ Fedwire ►Funds transfer◄, the bank receives finally collected funds at the time the payment is made. (*See* 12 CFR 210.31.) Finally collected funds generally are received for an ACH credit transfer when they are posted to the receiving bank's account on the settlement day. In certain cases, the bank receiving ACH credit payments will not receive the specific payment instructions indicating which accounts to credit until after settlement day. In these cases, the payments are not considered received until the information on the account and amount to be credited is received.

3. This paragraph also establishes the extent to which an electronic payment is considered made. Thus, if a participant on a private network fails to settle and the receiving bank receives finally settled funds representing only a partial amount of the payment, it must make only the amount that it actually received available for withdrawal.

4. The availability requirements of this regulation do not preempt or invalidate other rules, regulations, or agreements which require funds to be made available on a more prompt basis. For example, the next-day availability requirement for ACH credits in this section does not preempt ACH

association rules and Treasury regulations (31 CFR part 210), which provide that the proceeds of these credit payments be available to the recipient for withdrawal on the day the bank receives the funds.

D. 229.10(c) Certain Check Deposits

1. The EFA Act generally requires that funds be made available on the business day following the banking day of deposit for Treasury checks, state and local government checks, cashier's checks, certified checks, teller's checks, and "on us" checks, under specified conditions. (Treasury checks are checks drawn on the Treasury of the United States and have a routing number beginning with the digits "0000.") This section also requires next-day availability for additional types of checks not addressed in the EFA Act. Checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank and U.S. Postal Service money orders also must be made available on the first business day following the day of deposit under specified conditions. For the purposes of this section, all checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank that contain in the MICR line a routing number that is listed in appendix A are subject to the next-day availability requirement if they are deposited in an account held by a payee of the check and in person to an employee of the depositary bank, regardless of the purposes for which the checks were issued. For all new accounts, even if the new account exception is not invoked, traveler's checks must be included in the $5,000 aggregation of checks deposited on any one banking day that are subject to the next-day availability requirement. (*See* § 229.13(a).)

2. Deposit in Account of Payee. One statutory condition to receipt of next-day availability of Treasury checks, state and local government checks, cashier's checks, certified checks, and teller's checks is that the check must be "endorsed only by the person to whom it was issued." The EFA Act could be interpreted to include a check that has been indorsed in blank and deposited into an account of a third party that is not named as payee. [The Board believes that s]►S◄uch a check presents greater risks than a check deposited by the payee and that Congress did not intend to require next-day availability for such checks. The regulation, therefore, provides that funds must be available on the business day following deposit only if the check is deposited in an account held by a payee of the check. For the purposes of this section, payee does not include transferees other than named payees. The regulation also applies this condition to Postal Service money orders and checks drawn on Federal Reserve Banks and Federal Home Loan Banks.

3. Deposits Made to an Employee of the Depositary Bank.

a. In most cases, next-day availability of the proceeds of checks subject to this section is conditioned on the deposit of these checks in person to an employee of the depositary bank. If the deposit is not made to an employee of the depositary bank on the premises of such bank, the proceeds of the deposit must be made available for withdrawal by the start of business on the second business day after deposit, under [paragraph (c)(2) of this section]►§ 229.12◄. For example, second-day availability rather than next-day availability would be allowed for deposits of checks subject to this section made at a proprietary ATM, night depository, through the mail or a lock box, or at a teller station staffed by a person who is not an employee of the depositary bank. Second-day availability also may be allowed for deposits picked up by an employee of the depositary bank at the customer's premises; such deposits would be considered made upon receipt at the branch or other location of the depositary bank. Employees of a contractual branch would not be considered employees of the depositary bank for the purposes of this regulation, and deposits at contractual branches would be treated the same as deposits to a proprietary ATM for the purposes of this regulation. (*See* also, Commentary to § 229.19(a).)

b. In the case of Treasury checks, the EFA Act and regulation do not condition the receipt of next-day availability to deposits at staffed teller stations. Therefore, Treasury checks deposited at a proprietary ATM must be accorded next-day availability, if the check is deposited to an account of a payee of the check.

4. "On Us" Checks. The EFA Act [and regulation] require►s◄ next-day availability for "on us" checks, i.e., checks deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank, if both branches are located in the same state or ►geographical area served by a Federal Reserve Bank check processing center ("◄check processing region►")◄. [Thus, checks deposited in one branch of a bank and drawn on another branch of the same bank must receive next-day availability even if the branch on which the checks are drawn is located in another check processing region but in the same state as the branch in which the check is deposited]. ►As there is now only one check processing center, all "on-us" checks deposited in the U.S. must receive next-day availability.◄ For the purposes of this requirement, deposits at facilities that are not located on the premises of a brick-and-mortar branch of the bank, such as off-premise ATMs and remote depositories, are not considered deposits made at branches of the depositary bank.

5. [First $100]►The minimum amount◄.

a. The EFA Act and regulation also require that [up to] ►at least◄ $100 ►("the minimum amount")◄ of the aggregate deposit by check or checks not subject to next-day availability on any one banking day be made available on the next business day. For example, if [$70]►less than the minimum amount◄ were deposited in an account by check(s) on a Monday, the entire [$70]►amount of the deposit◄ must be available for withdrawal at the start of business on Tuesday. If [$200]► more than the minimum amount◄ were deposited by check(s) on a Monday, this section requires that [$100 of the funds] ►the minimum amount◄ be available for withdrawal at the start of business on Tuesday. The portion of the customer's deposit to which the [$100] ►minimum amount◄ must be applied is at the discretion of the depositary bank, as long as it is not applied to any checks subject to next-day availability. The [$100] next-day availability rule ►for the minimum amount◄ does not apply to deposits at nonproprietary ATMs.

b. The [$100]►minimum amount◄ that must be made available under this rule is in addition to the amount that must be made available for withdrawal on the business day after deposit under other provisions of this section. For example, if a customer deposits a $1,000 Treasury check[,] and a $1,000 [local]check ►not subject to paragraphs (c)(1)(i) through (vi)◄ in its account on Monday, [$1,100 must be made available for withdrawal on Tuesday—] the proceeds of the $1,000 Treasury check, as well as the [first $100]►minimum amount from◄ [of] the [local]►other◄ check ►must be made available for withdrawal on Tuesday◄.

c. A depositary bank may aggregate all [local and nonlocal] check deposits made by the customer on a given banking day for the purposes of the [$100]►minimum amount ◄ next-day availability rule. Thus, if a customer has two accounts at the depositary bank, and on a particular banking day makes deposits to each account ►that exceed the minimum amount◄, [$100]►the minimum amount from◄ [of] the total ►checks◄ deposited to the two accounts must be made available on the business day after deposit. Banks may aggregate deposits to individual and joint accounts for the purposes of this provision.

d. If the customer deposits a [$500 local] check ► not subject to paragraphs (c)(1)(i) through (vi) that exceeds the minimum amount◄, and gets [$100] cash back ►in an amount equal to or greater than the minimum amount◄ at the time of deposit, the bank need not make an additional [$100]►amount◄ available for withdrawal on the following day. Similarly, if the customer depositing the [local] check has a negative book balance, or negative available balance in its account at the time of deposit, the [$100]►minimum amount◄ that must be available on the next business day may be made available by applying the [$100]►minimum amount◄ to the negative balance, rather than making the [$100]►minimum amount◄ available for withdrawal by cash or check on the following day.

6. Special Deposit Slips.

a. Under the EFA Act, a depositary bank may require the use of a special deposit slip as a condition to providing next-day availability for certain types of checks. This condition was included in the EFA Act because many banks determine the availability of their customers' check deposits in an automated manner by reading the [MICR-encoded] routing number on the deposited checks. Using these procedures, a bank can determine whether a check is [a local or nonlocal check, a check] drawn on the Treasury, a Federal Reserve Bank, a Federal Home Loan Bank, or a branch of the depositary bank, or a U.S. Postal Service money order. Appendix A includes the routing numbers of certain categories of checks that are subject to next-day availability. The bank cannot require a special deposit slip for these checks.

b. A bank cannot distinguish whether the check is a state or local government check, cashier's check, certified check, or teller's check by reading the ⟦MICR-encoded⟧ routing number, because these checks bear the same routing number as other checks drawn on the same bank that are not accorded next-day availability. Therefore, a bank may require a special deposit slip for these checks.

c. The regulation specifies that if a bank decides to require the use of a special deposit slip (or a special deposit envelope in the case of a deposit at an ATM or other unstaffed facility) as a condition to granting next-day availability under paragraphs (c)(1)(iv) or (c)(1)(v) of this section ⟦or second-day availability under paragraph (c)(2) of this section⟧, and if the deposit slip that must be used is different from the bank's regular deposit slips, the bank must either provide the special slips to its customers or inform its customers how such slips may be obtained and make the slips reasonably available to the customers.

d. A bank may meet this requirement by providing customers with an order form for the special deposit slips and allowing sufficient time for the customer to order and receive the slips before this condition is imposed. If a bank provides deposit slips in its branches for use by its customers, it also must provide the special deposit slips in the branches. If special deposit envelopes are required for deposits at an ATM, the bank must provide such envelopes at the ATM.

e. Generally, a teller is not required to advise depositors of the availability of special deposit slips merely because checks requiring special deposit slips for next-day availability are deposited without such slips. If a bank provides the special deposit slips only upon the request of a depositor, however, the teller must advise the depositor of the availability of the special deposit slips, or the bank must post a notice advising customers that the slips are available upon request. Such notice need not be posted at each teller window, but the notice must be posted in a place where consumers seeking to make deposits are likely to see it before making their deposits. For example, the notice might be posted at the point where the line forms for teller service in the lobby. The notice is not required at any drive-through teller windows nor is it required at night depository locations, or at locations where consumer deposits are not accepted. If a bank prepares a deposit for a depositor, it must use a special deposit slip where appropriate. A bank may require the customer to segregate the checks subject to next-day availability for which special deposit slips could be required, and to indicate on a regular deposit slip that such checks are being deposited, if the bank so instructs its customers in its initial disclosure.

V. Section 229.11—[Reserved]

VI. Section 229.12—Availability Schedule

⟦A. 229.12(a) Effective Date

1. The availability schedule set forth in this section supersedes the temporary schedule that was effective September 1, 1988, through August 31, 1990.⟧

A. 229.12⟦(b)⟧►(a)◄ ⟦Local Checks and Certain Other Checks⟧►In general.◄

1. ⟦Local⟧►Except as provided in § 229.10(c), § 229.12(b), (c) and (d), and § 229.13◄ checks must be made available for withdrawal not later than the second business day following the banking day on which the checks were deposited. ►Thus, the proceeds of a check deposited on a Monday generally must be made available for withdrawal on Wednesday.◄

⟦2. In addition, the proceeds of Treasury checks and U.S. Postal Service money orders not subject to next-day (or second-day) availability under § 229.10(c), checks drawn on Federal Reserve Banks and Federal Home Loan Banks, checks drawn by a state or unit of general local government, cashier's checks, certified checks, and teller's checks not subject to next-day (or second-day) availability under § 229.10(c) and payable in the same check processing region as the depositary bank, must be made available for withdrawal by the second business day following deposit.⟧

⟦3⟧►2◄. Exceptions are made for withdrawals by cash or similar means►,◄ ⟦and⟧ for deposits in banks located outside the 48 contiguous states►, for checks deposited in a nonproprietary ATM, and for the reasons set forth in § 229.13◄. ⟦Thus, the proceeds of a local check deposited on a Monday generally must be made available for withdrawal on Wednesday.⟧

⟦C. 229.12(c) Nonlocal Checks

1. Nonlocal checks must be made available for withdrawal not later than the fifth business day following deposit, *i.e.,* proceeds of a nonlocal check deposited on a Monday must be made available for withdrawal on the following Monday. In addition, a check described in § 229.10(c) that does not meet the conditions for next-day availability (or second-day availability) is treated as a nonlocal check, if the check is drawn on or payable through or at a nonlocal paying bank. Adjustments are made to the schedule for withdrawals by cash or similar means and deposits in banks located outside the 48 contiguous states.

⟦2. Reduction in Schedules.

a. Section 603(d)(1) of the EFA Act (12 U.S.C. 4002(d)(1)) requires the Board to reduce the statutory schedules for any category of checks where most of those checks would be returned in a shorter period of time than provided in the schedules. The conferees indicated that "if the new system makes it possible for two-thirds of the items of a category of checks to meet this test in a shorter period of time, then the Federal Reserve must shorten the schedules accordingly." H.R. Rep. No. 261, 100th Cong., 1st Sess. at 179 (1987).

b. Reduced schedules are provided for certain nonlocal checks where significant improvements can be made to the EFA Act's schedules due to transportation arrangements or proximity between the check processing regions of the depositary bank and the paying bank, allowing for faster collection and return. Appendix B sets forth the specific reduction of schedules applicable to banks located in certain check processing regions.

c. A reduction in schedules may apply even in those cases where the determination that the check is nonlocal cannot be made based on the routing number on the check. For example, a nonlocal credit union payable-through share draft may be subject to a reduction in schedules if the routing number of the payable-through bank that appears on the draft is included in appendix B, even though the determination that the payable-through share draft is nonlocal is based on the location of the credit union and not the routing number on the draft.⟧

B. 229.12⟦(d)⟧►(b)◄ Time Period Adjustment for Withdrawal by Cash or Similar Means

1. The EFA Act provides an adjustment to the availability rules for cash withdrawals. Funds from ⟦local and nonlocal⟧ checks ►(other than checks subject to § 229.10(c))◄ need not be available for cash withdrawal until 5 p.m. on the day specified in the schedule. At 5 p.m., $400 of the deposit must be made available for cash withdrawal►(the "cash withdrawal amount")◄. ⟦This $400⟧ ►The cash withdrawal amount◄ is in addition to the ⟦first $100⟧► minimum amount◄ of a day's deposit ►under § 229.10(c)(1)(vii)◄, which must be made available for withdrawal at the start of business on the first business day following the banking day of deposit. If the proceeds of ⟦local and nonlocal⟧ checks become available for withdrawal on the same business day, the ⟦$400 withdrawal limitation applies to⟧►cash withdrawal amount is based on◄ the aggregate amount of the funds that became available for withdrawal on that day. The remainder of the funds must be available for cash withdrawal at the start of business on the business day following the business day specified in the schedule.

2. The EFA Act recognizes that the ⟦$400⟧►cash withdrawal amount◄ that must be provided on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit, and explicitly provides that the EFA Act does not supersede the bank's policy in this regard. The ⟦Board believes that the⟧ rationale for accommodating a bank's ATM withdrawal limit also applies to other cash withdrawal limits established by that bank. Section 229.19(c)(4) of the regulation addresses the relation between a bank's cash withdrawal limit (for over-the-counter cash withdrawals as well as ATM cash withdrawals) and the requirements of this subpart.

3. ⟦The Board believes that the⟧ Congress included this special cash withdrawal rule to provide a depositary bank with additional time to learn of the nonpayment of a check before it must make funds available to its customer. If a customer deposits a ⟦local⟧ check on a Monday, and that check is returned by the paying bank, the depositary bank may not receive the returned check until Thursday, the day after funds for a ⟦local⟧ check ordinarily must be made available for withdrawal. The intent of the special cash withdrawal rule is to minimize this risk to the depositary bank. For this rule to minimize the depositary bank's risk, it must apply not only to cash withdrawals, but also to withdrawals by other means that result in an irrevocable debit to the customer's account or commitment to pay by

the bank on the customer's behalf during the day. Thus, the cash withdrawal rule also includes withdrawals by electronic payment, issuance of a cashier's or teller's check, certification of a check, or other irrevocable commitment to pay, such as authorization of an on-line point-of-sale debit. The rule also would apply to checks presented over the counter for payment on the day of presentment by the depositor or another person. Such checks could not be dishonored for insufficient funds if an amount sufficient to cover the check had became available for cash withdrawal under this rule; however, payment of such checks would be subject to the bank's cut-off hour established under U.C.C. 4–108. The cash withdrawal rule does not apply to checks and other provisional debits presented to the bank for payment that the bank has the right to return.

C. 229.12[(e)]►(c)◄ Extension of Schedule for Certain Deposits in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands

1. The EFA Act and regulation provide an extension of the availability schedules for check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands. The schedules for [local] checks ►(other than those subject to next-day availability under § 229.10(c))◄[, nonlocal checks (including nonlocal checks subject to the reduced schedules of appendix B),] and deposits at nonproprietary ATMs are extended by one business day for checks deposited to accounts in banks located in these jurisdictions that are drawn on or payable at or through a paying bank not located in the same jurisdiction as the depositary bank. For example, a check deposited in a bank in Hawaii and drawn on a San Francisco paying bank must be made available for withdrawal not later than the third business day following deposit. This extension does not apply to deposits that must be made available for withdrawal on the next business day.

2. The Congress did not provide this extension of the schedules to checks drawn on a paying bank located in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands and deposited in an account at a depositary bank in the 48 contiguous states. Therefore, a check deposited in a San Francisco bank drawn on a Hawaii paying bank must be made available for withdrawal not later than the second rather than the third business day following deposit.

D. 229.12[(f)]►(d)◄ Deposits at Nonproprietary ATMs

1. The EFA Act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. All deposits at a nonproprietary ATM must be made available for withdrawal by the [fifth] ►fourth◄ business day following the banking day of deposit. For example, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than [Monday of the following week]►Friday.◄

►2.◄ The provisions of section 229.10(c)(1)(vii) [requiring a depositary bank to make up to $100 of an aggregate daily deposit] ►setting forth the minimum amount of a deposit that must be made◄ available for withdrawal on the first business day after the banking day of deposit do not apply to deposits at a nonproprietary ATM.

VII. Section 229.13—Exceptions

A. Introduction

1. While certain safeguard exceptions (such as those for new accounts and checks the bank has reasonable cause to believe are uncollectible) are established in the EFA Act, [the Congress gave the Board the discretion to determine whether certain other exceptions should be included in its regulations. Specifically,] the EFA Act [gives the Board the authority to establish]►permits other exceptions to be established by regulation, specifically◄ exceptions to the schedules for large or redeposited checks and for accounts that have been repeatedly overdrawn. These exceptions apply to [local and nonlocal] checks subject to the general availability schedule in § 229.12 as well as to checks that must otherwise be accorded next-day [(or second-day)] availability under § 229.10(c).

2. Many checks will not be returned to the depositary bank by the time funds must be made available for withdrawal [under the next-day (or second-day), local and nonlocal schedules]. In order to reduce risk to depositary banks, [the Board has exercised its statutory authority to adopt]►Regulation CC contains◄ these exceptions to the schedules in the regulation to allow the depositary bank to extend the time within which it is required to make funds available.

[3. The EFA Act also gives the Board the authority to suspend the schedules for any classification of checks, if the schedules result in an unacceptable level of fraud losses. The Board will adopt regulations or issue orders to implement this statutory authority if and when circumstances requiring its implementation arise.]

B. 229.13(a) New Accounts

1. Definition of New Account.

a. The EFA Act provides an exception to the availability schedule for new accounts. An account is defined as a new account during the first 30 calendar days after the account is opened. An account is opened when the first deposit is made to the account. An account is not considered a new account, however, if each customer on the account has a transaction account relationship with the depositary bank, including a dormant account, that is at least 30 calendar days old or if each customer has had an established transaction account with the depositary bank within the 30 calendar days prior to opening the second account.

b. The following are examples of what constitutes, and does not constitute, a new account:

i. If the customer has an established account with a bank and opens a second account with the bank, the second account is not subject to the new account exception.

ii. If a customer's account were closed and another account opened as a successor to the original account (due, for example, to the theft of checks or a debit card used to access the original account), the successor account is not subject to the new account exception, assuming the previous account relationship is at least 30 days old. Similarly, if a customer closes an established account and opens a separate account within 30 days, the new account is not subject to the new account exception.

iii. If a customer has a savings deposit or other deposit that is not an account (as that term is defined in § 229.2(a)) at the bank, and opens an account, the account is subject to the new account exception.

iv. If a person that is authorized to sign on a corporate account (but has no other relationship with the bank) opens a personal account, the personal account is subject to the new account exception.

v. If a customer has an established joint account at a bank, and subsequently opens an individual account with that bank, the individual account is not subject to the new account exception.

vi. If two customers that each have an established individual account with the bank open a joint account, the joint account is not subject to the new account exception. If one of the customers on the account has no current or recent established account relationship with the bank, however, the joint account is subject to the new account exception, even if the other individual on the account has an established account relationship with the bank.

2. Rules Applicable to New Accounts.

a. During the new►-◄account exception period, the ►general◄ schedule[s] for [local and nonlocal] checks ►in § 229.12◄ do►es◄ not apply, and, unlike the other exceptions provided in this section, the regulation provides no maximum time frames within which the proceeds of these deposits must be made available for withdrawal. Maximum times within which funds must be available for withdrawal during the new account period are provided, however, for certain other deposits. Deposits received by cash and electronic payments must be made available for withdrawal in accordance with § 229.10.

b. Special rules also apply to deposits of Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks and Federal Home Loan Banks, state and local government checks, cashier's checks, certified checks, teller's checks, and, for the purposes of the new account exception only, traveler's checks. The first $5,000 of funds deposited to a new account on any one banking day by these check deposits must be made available for withdrawal in accordance with § 229.10(c)[. Thus, the first $5,000 of the proceeds of these check deposits must be made available]►; that is,◄ on the first business day following deposit, if the deposit is made in person to an employee of the depositary bank and the other conditions of next-day availability are met. [Funds must be made available on the second business day after deposit for deposits that are not made over the counter, in accordance with § 229.10(c)(2).] (Proceeds of Treasury check deposits must be made available on the first business day after deposit, even if the check is not deposited in person to an employee of the depositary

bank.) Funds in excess of the first $5,000 deposited by these types of checks on a banking day must be available for withdrawal not later than the ninth business day following the banking day of deposit. The requirements of § 229.10(c)(1)(vi) and (vii) that "on us" checks and the [first $100]►minimum amount◄ of a day's deposit be made available for withdrawal on the next business day do not apply during the new account period.

3. Representation by Customer. The depositary bank may rely on the representation of the customer that the customer has no established account relationship with the bank, and has not had any such account relationship within the past 30 days, to determine whether an account is subject to the new account exception.

C. 229.13(b) Large Deposits

1. Under the large►-◄deposit exception, a depositary bank may extend the hold placed on check deposits to the extent that the amount of the aggregate deposit on any banking day exceeds $5,000►(the "large-deposit amount")◄. This exception applies to [local and nonlocal] checks ►under § 229.12◄, as well as to checks that otherwise would be made available on the next [(or second)] business day after the day of deposit under § 229.10(c). Although [the first $5,000 of a day's deposit]►any amount under the large-deposit amount◄ is subject to the availability otherwise provided for checks, the amount in excess of [$5,000]►the large-deposit threshold◄ may be held for an additional period of time as provided in § 229.13(h). When the large►-◄deposit exception is applied to deposits composed of a mix of checks that would otherwise be subject to differing availability schedules, the depositary bank has the discretion to choose the portion of the deposit to which it applies the exception. Deposits by cash or electronic payment are not subject to this exception for large deposits.

2. The following example illustrates the operation of the large►-◄deposit exception. If a customer deposits $2,000 in cash and a $9,000 [local] check on a Monday ►that is not subject to next-day availability◄, [$2,100 (] the proceeds of the cash deposit and [$100] ►the minimum amount under § 229.10(c)◄ from the [local] check deposit[)] must be made available for withdrawal on Tuesday. [An additional $4,900 of the proceeds of the local check] ►The amount under the large-deposit threshold less the minimum amount under § 229.10(c)◄ must be available for withdrawal on Wednesday in accordance with the [local] ►general◄ schedule, and the remaining [$4,000]►amount over the large-deposit threshold◄ may be held for an additional period of time under the large►-◄deposit exception.

3. Where a customer has multiple accounts with a depositary bank, the bank may apply the large►-◄deposit exception to the aggregate deposits to all of the customer's accounts, even if the customer is not the sole holder of the accounts and not all of the holders of the customer's accounts are the same. Thus, a depositary bank may aggregate the deposits made to two individual accounts in the same name, to an individual and a joint account with one common name, or to two joint accounts with at least one common name for the purpose of applying the large►-◄deposit exception. Aggregation of deposits to multiple accounts is permitted because [the Board believes that] the risk to the depositary bank associated with large deposits is similar regardless of how the deposits are allocated among the customer's accounts.

D. 229.13(c) Redeposited Checks

1. The EFA Act [gives the Board the authority to promulgate]►provides that the regulation may include◄ an exception to the schedule for checks that have been returned unpaid and redeposited. Section 229.13(c) provides such an exception for checks that have been returned unpaid and redeposited by the customer or the depositary bank. This exception applies to [local and nonlocal] checks ►subject to § 229.12◄, as well as to checks that would otherwise be made available on the next [(or second)] business day after the day of deposit under § 229.10(c).

2. This exception addresses the increased risk to the depositary bank that checks that have been returned once will be uncollectible when they are presented to the paying bank a second time. [The Board, however, does not believe that t]►T◄his increased risk is ►not◄ present for checks that have been returned due to a missing indorsement. Thus, the exception does not apply to checks returned unpaid due to missing indorsements and redeposited after the missing indorsement has been obtained, if the reason for return indicated on the check (*see* § 229.30(d)) states that it was returned due to a missing indorsement. For the same reason, this exception does not apply to a check returned because it was postdated (future dated), if the reason for return indicated on the check states that it was returned because it was postdated, and if it is no longer postdated when redeposited.

3. To determine when funds must be made available for withdrawal, the banking day on which the check is redeposited is considered to be the day of deposit. A depositary bank that made [$100] ►the minimum amount◄ of a check available for withdrawal under § 229.10(c)(1)(vii) can charge back the full amount of the check, including the [$100]►the minimum amount made available◄, if the check is returned unpaid, and the [$100] ►minimum amount◄ need not be made available again if the check is redeposited.

E. 229.13(d) Repeated Overdrafts

1. The EFA Act [gives the Board the authority to establish]►provides that the regulation may include◄ an exception for "deposit accounts which have been overdrawn repeatedly." This paragraph provides two tests to determine what constitutes repeated overdrafts. Under the first test, a customer's accounts are considered repeatedly overdrawn if, on six banking days within the preceding six months, the available balance in any account held by the customer is negative, or the balance would have become negative if checks or other charges to the account had been paid, rather than returned. This test can be met based on separate occurrences (*e.g.,* checks that are returned for insufficient funds on six different days), or based on one occurrence (*e.g.,* a negative balance that remains on the customer's account for six banking days). If the bank dishonors a check that otherwise would have created a negative balance, however, the incident is considered an overdraft only on that day.

2. The second test addresses substantial overdrafts. Such overdrafts increase the risk to the depositary bank of dealing with the repeated overdrafter. Under this test, a customer incurs repeated overdrafts if, on two banking days within the preceding six months, the available balance in any account held by the customer is negative in an amount of $5,000 or more, or would have become negative in an amount of $5,000 or more if checks or other charges to the account had been paid.

3. The exception relates not only to overdrafts caused by checks drawn on the account, but also overdrafts caused by other debit charges (*e.g.* ACH debits, point-of-sale transactions, returned checks, account fees, etc.). If the potential debit is in excess of available funds, the exception applies regardless of whether the items were paid or returned unpaid.

►4. Under either test described above, the "other charges to the account" that would have created an overdraft had they been paid do not include attempted debit card transactions for which the depositary bank has declined the authorization request, because there is no transaction that has occurred.◄

►5.◄ An overdraft resulting from an error on the part of the depositary bank, or from the imposition of overdraft charges for which the customer is entitled to a refund under §§ 229.13(e) or 229.16(c), cannot be considered in determining whether the customer is a repeated overdrafter. The exception excludes accounts with overdraft lines of credit, unless the credit line has been exceeded or would have been exceeded if the checks or other charges to the account had been paid.

[4.]►6.◄This exception applies to [local and nonlocal] checks ►subject to § 229.12◄, as well as to checks that otherwise would be made available on the next [(or second)] business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the [first $100]►minimum amount◄ of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii).

F. 229.13(e) Reasonable Cause To Doubt Collectibility

1. In the case of certain check deposits, if the bank has reasonable cause to believe the check is uncollectible, it may extend the time funds must be made available for withdrawal. This exception applies to [local and nonlocal] checks ►under § 229.12◄, as well as to checks that would otherwise be made available on the next [(or second)] business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make

the [first $100]►minimum amount◄ of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). If the reasonable►-◄cause exception is invoked, the bank must include in the notice to its customer, required by § 229.13(g), the reason that the bank believes that the check is uncollectible.

2. The following are several examples of circumstances under which the reasonable►-◄cause exception may be invoked:

a. If a bank received a notice from the paying bank that a check was not paid and is being returned to the depositary bank, the depositary bank could place a hold on the check or extend a hold previously placed on that check, and notify the customer that the bank had received notice that the check is being returned. The exception could be invoked even if the notice were incomplete, if the bank had reasonable cause to believe that the notice applied to that particular check.

b. The depositary bank may have received information from the paying bank, prior to the presentment of the check, that gives the bank reasonable cause to believe that the check is uncollectible. For example, the paying bank may have indicated that payment has been stopped on the check, or that the drawer's account does not currently have sufficient funds to honor the check. Such information may provide sufficient basis to invoke this exception. In these cases, the depositary bank could invoke the exception and disclose as the reason the exception is being invoked the fact that information from the paying bank indicates that the check may not be paid.

c. The fact that a check is deposited more than six months after the date on the check (*i.e.*►,◄ a stale check) is a reasonable indication that the check may be uncollectible, because under U.C.C. 4–404 a bank has no duty to its customer to pay a check that is more than six months old. Similarly, if a check being deposited is postdated (future dated), the bank may have a reasonable cause to believe the check is uncollectible, because the check may not be properly payable under U.C.C. 4–401. The bank, in its notice, should specify that the check is stale-dated or postdated.

d. There are reasons that may cause a bank to believe that a check is uncollectible that are based on confidential information. For example, a bank could conclude that a check being deposited is uncollectible based on its reasonable belief that the depositor is engaging in kiting activity. Reasonable belief as to the insolvency or pending insolvency of the drawer of the check or the drawee bank and that the checks will not be paid also may justify invoking this exception. In these cases, the bank may indicate, as the reason it is invoking the exception, that the bank has confidential information that indicates that the check might not be paid.

3. [The Board has included a]►Appendix C contains a model reasonable►-◄cause exception notice as a model notice in appendix C (C–[13]►9◄). The ►commentary in appendix C to the◄ model notice includes several reasons for which this exception may be invoked. The [Board does not intend to provide]►commentary list is not◄ a comprehensive list of reasons for which this exception may be invoked; another reason that does not appear ►in the commentary to the◄ [on] the model notice may be used as the basis for extending a hold, if the reason satisfies the conditions for invoking this exception. A depositary bank may invoke the reasonable►-◄cause exception based on a combination of factors that give rise to a reasonable cause to doubt the collectibility of a check. In these cases, the bank should disclose the primary reasons for which the exception was invoked in accordance with paragraph (g) of this section.

4. The regulation provides that the determination that a check is uncollectible shall not be based on a class of checks or persons. For example, a depositary bank cannot invoke this exception simply because [the check is drawn on a paying bank in a rural area]►a paying bank demands paper presentment◄ and the depositary bank knows it will not have the opportunity to learn of nonpayment of that check before funds must be made available under the availability schedules. Similarly, a depositary bank cannot invoke the reasonable cause exception based on the race or national origin of the depositor.

5. If a depositary bank invokes this exception with respect to a particular check and does not provide a written notice to the depositor at the time of deposit, the depositary bank may not assess any overdraft fee (such as an "NSF" charge) or charge interest for use of overdraft credit, if the check is paid by the paying bank and these charges would not have occurred had the exception not been invoked. A bank may assess an overdraft fee under these circumstances, however, if it provides notice to the customer, in the notice of exception required by paragraph (g) of this section, that the fee may be subject to refund, and refunds the charges upon the request of the customer. The notice must state that the customer may be entitled to a refund of any overdraft fees that are assessed if the check being held is paid, and indicate where such requests for a refund of overdraft fees should be directed.

G. 229.13(f) Emergency Conditions

1. Certain emergency conditions may arise that delay the collection or return of checks, or delay the processing and updating of customer accounts. In the circumstances specified in this paragraph, the depositary bank may extend the holds that are placed on deposits of checks that are affected by such delays, if the bank exercises such diligence as the circumstances require. For example, if a bank learns that a check has been delayed in the process of collection due to [severe weather conditions] ►an interruption of computer facilities◄ or other causes beyond its control, an emergency condition covered by this section may exist and the bank may place a hold on the check to reflect the delay. This exception applies to [local and nonlocal] checks ►subject to § 229.12◄, as well as ►to◄ checks that would otherwise be made available on the next [(or second)] business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the [first $100]►minimum amount◄ of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). In cases where the emergency►-◄conditions exception does not apply, as in the case of deposits of cash or electronic payments under § 229.10 (a) and (b), the depositary bank may not be liable for a delay in making funds available for withdrawal if the delay is due to a bona fide error such as an unavoidable computer malfunction.

H. 229.13(g) Notice of Exception

1. In general.

a. If a depositary bank invokes any of the safeguard exceptions to the schedules listed above, other than the new►-◄account or emergency►-◄conditions exception, and extends the hold on a deposit beyond the time periods permitted in §§ 229.10(c) and 229.12, it must provide a notice to its customer. Except in the cases described in paragraphs (g)(2) and (g)(3) of this section, notices must be given each time an exception hold is invoked and must state [the] ►a number or code that identifies the◄ customer's account [number], the date of deposit, ►the total amount of the deposit, the amount of the deposit that is being delayed,◄ the reason the exception was invoked, and the time period within which funds will be available for withdrawal. For a customer that is not a consumer, a depositary bank satisfies the written-notice requirement by sending an electronic notice that displays the text and is in a form that the customer may keep, if the customer agrees to such means of notice. Information is in a form that the customer may keep if, for example, it can be downloaded or printed. For a customer who is a consumer, a depositary bank satisfies the written-notice requirement by sending an electronic notice in compliance with the requirements of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001 *et seq.*), which include obtaining the consumer's affirmative consent to such means of notice.

b. With respect to paragraph (g)(1), the requirement that the notice state the [time period within]►day on◄ which the funds shall be made available may be satisfied [if the notice identifies the date the deposit is received and information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example,] for a deposit involving more than one check, ►if◄ [the bank need not provide a notice that discloses when funds from each individual check in the deposit will be available for withdrawal; instead,] the bank [may] provide►s◄ a total dollar amount for each of the [time periods when]►days on which the◄ funds will be available[, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the funds will be available for deposit.] Appendix C (C–[12]►9◄) contains a model notice.

c. For deposits made in person to an employee of the depositary bank, the notice generally must be given to the person making the deposit, *i.e.,* the "depositor►,◄"[,] at the time of deposit. The depositor need not be the customer holding the account. For other deposits, such as deposits received at

an ATM, lobby deposit box, night depository, or through the mail, notice must be [mailed] ►sent◄ to the customer not later than the close of the business day following the banking day on which the deposit was made.

d. Notice to the customer also may be provided at a later time, if the facts upon which the determination to invoke the exception ►is made◄ do not become known to the depositary bank until after notice would otherwise have to be given. In these cases, the bank must [mail] ►send◄ the notice to the customer as soon as practicable, but not later than the business day following the day the facts become known. A bank is deemed to have knowledge when the facts are brought to the attention of the person or persons in the bank responsible for making the determination, or when the facts would have been brought to their attention if the bank had exercised due diligence.

►e. If the customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer no later than the first business day following the day the facts become known to the depositary bank, or the deposit is made, whichever is later.◄

[e]►f◄. In those cases described in paragraphs (g)(2) and (g)(3), the depositary bank need not provide a notice every time an exception hold is applied to a deposit. When paragraph (g)(2) or (g)(3) requires disclosure of the time period within which deposits subject to the exception generally will be available for withdrawal, the requirement may be satisfied if the one-time notice states when "on us[,]" [local, and nonlocal] ►and other◄ checks will be available for withdrawal if an exception is invoked.

2. One-time exception notice.

a. Under paragraph (g)(2), if a nonconsumer account (see Commentary to § 229.2[(n)]►(o)◄) is subject to the large►-◄deposit or redeposited►-◄check exception, the depositary bank may give its customer a single notice at or prior to the time notice must be provided under paragraph (g)(1). Notices provided under paragraph (g)(2) must contain the reason the exception may be invoked and the time period within which deposits subject to the exception will be available for withdrawal (see Model Notice C–[14]►10◄). A depositary bank may provide a one-time notice to a nonconsumer customer under paragraph (g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. A one-time notice may state that the depositary bank will apply exception holds to certain subsets of deposits to which the large►-◄deposit or redeposited►-◄check exception may apply, and the notice should identify such subsets. For example, the depositary bank may apply the redeposited►-◄check exception only to checks that were redeposited automatically by the depositary bank in accordance with an agreement with the customer, rather than to all redeposited checks. In lieu of sending the one-time notice, a depositary bank may send individual hold notices for each deposit subject to the large►-◄deposit or redeposited►-◄check exception in accordance with § 229.13(g)(1) (*see* Model Notice C–[12]►9◄).

b. In the case of a deposit of multiple checks, the depositary bank has the discretion to place an exception hold on any combination of checks in excess of [$5,000]►the large-deposit threshold◄. The notice should enable a customer to determine the availability of the deposit in the case of a deposit of multiple checks ►subject to differing hold periods◄. [For example, if a customer deposits a $5,000 local check and a $5,000 nonlocal check, under the large deposit exception, the depositary bank may make funds available in the amount of (1) $100 on the first business day after deposit, $4,900 on the second business day after deposit (local check), and $5,000 on the eleventh business day after deposit (nonlocal check with 6-day exception hold), or (2) $100 on the first business day after deposit, $4,900 on the fifth business day after deposit (nonlocal check), and $5,000 on the seventh business day after deposit (local check with 5-day exception hold).] The notice ►also◄ should reflect the bank's priorities in placing exception holds on next-day [(or second-day), local, and nonlocal] ►and other◄ checks.

3. Notice of repeated►-◄overdraft exception. Under paragraph (g)(3), if an account is subject to the repeated►-◄overdraft exception, the depositary bank may provide one notice to its customer for each time period during which the exception will apply. Notices sent pursuant to paragraph (g)(3) must state the customer's account [number] ►identifier◄, the fact the exception was invoked under the repeated►-◄overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply (see Model Notice C–[15]►11◄). A depositary bank may provide a one-time notice to a customer under paragraph (g)(3) only if the repeated►-◄overdraft exception will be invoked for most check deposits to the customer's account.

4. Emergency►-◄conditions exception notice.

a. If an account is subject to the emergency►-◄conditions exception under § 229.13(f), the depositary bank must provide notice in a reasonable form within a reasonable time, depending on the circumstances. For example, a depositary bank may learn of a weather emergency or a power outage that affects the paying bank's operations. Under these circumstances, it likely would be reasonable for the depositary bank to provide an emergency►-◄conditions exception notice in the same manner and within the same time as required for other exception notices. On the other hand, if a depositary bank experiences a weather or power outage emergency that affects its own operations, it may be reasonable for the depositary bank to provide a general notice to all depositors via postings ►on the depositary bank's website or through a directed e-mail◄, at branches and ATMs, or through newspaper, television, or radio notices.

b. If the depositary bank extends the hold placed on a deposit due to an emergency condition, the bank need not provide a notice if the funds would be available for withdrawal before the notice must be sent. For example, if on the last day of a hold period the depositary bank experiences a computer failure and customer accounts cannot be updated in a timely fashion to reflect the funds as available balances, notices are not required if the funds are made available before the notices must be sent.

5. Record retention. A depositary bank must retain a record of each notice of a reasonable►-◄cause exception for a period of two years, or such longer time as provided in the record retention requirements of § 229.21. This record must contain a brief description of the facts on which the depositary bank based its judgment that there was reasonable cause to doubt the collectibility of a check. In many cases, [such as where the exception was invoked on the basis of a notice of nonpayment received,] the record requirement may be met by retaining a copy of the notice sent to the customer. In other cases, such as where the exception was invoked on the basis of confidential information, a further description to the facts, such as insolvency of drawer, should be included in the record.

I. 229.13(h) Availability of Deposits Subject to Exceptions

1. If a depositary bank invokes any exception other than the new►-◄account exception, the bank may extend the time within which funds must be made available under the schedule by a reasonable period of time. This provision establishes that an extension of up to one business day for "on us" checks[,] ►and two◄ [five] business days for [local checks, and six business days for nonlocal checks] ►all other checks◄ [and checks deposited in a nonproprietary ATM] is reasonable. Under certain circumstances, however, a longer extension of the schedules may be reasonable. In these cases, the burden is placed on the depositary bank to establish that a longer period is reasonable.

2. For example, assume a bank extended the hold on a [local] check deposit by ►two◄ [five] business days based on its reasonable cause to believe that the check is uncollectible. If, on the day before the extended hold is scheduled to expire, the bank [receives a notification from the paying bank] ►learns◄ that the check is being returned unpaid, the bank may determine that a longer hold is warranted[, if it decides not to charge back the customer's account based on the notification]. If the bank decides to extend the hold, the bank must send a second notice, in accordance with paragraph (g) of this section, indicating the new date that the funds will be available for withdrawal.

3. With respect to Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, cashier's checks, certified checks, and teller's checks subject to the next-day [(or second-day)] availability requirement,

the depositary bank may extend the time funds must be made available for withdrawal under the large►-◄deposit, redeposited►-◄check, repeated►-◄overdraft, or reasonable►-◄cause exception by a reasonable period beyond the delay that would have been permitted under the regulation had the checks not been subject to the next-day [(or second-day)] availability requirement. The additional hold is added to the [local or nonlocal] ►general◄ schedule [that would apply based on the location of the paying bank] ►in § 229.12◄.

4. One business day for "on us" checks ►and two◄ [, five] business days for [local checks, and six business days for nonlocal checks or checks deposited in a nonproprietary ATM] ►all other checks◄, in addition to the time period provided in the schedule, should provide adequate time for ►a◄[the] depositary bank ►that accepts electronic returns under § 229.32(a)◄ to learn of the nonpayment of virtually all checks that are returned. [For example, if a customer deposits a $7,000 cashier's check drawn on a nonlocal bank, and the depositary bank applies the large deposit exception to that check, $5,000 must be available for withdrawal on the first business day after the day of deposit and the remaining $2,000 must be available for withdrawal on the eleventh business day following the day of deposit (six business days added to the five-day schedule for nonlocal checks), unless the depositary bank establishes that a longer hold is reasonable.]

5. In the case of the application of the emergency conditions exception, the depositary bank may extend the hold placed on a check by not more than a reasonable period following the end of the emergency or the time funds must be available for withdrawal under §§ 229.10(c) or 229.12, whichever is later.

6. This provision does not apply to holds imposed under the new►-◄account exception. Under that exception, the maximum time period within which funds must be made available for withdrawal is specified for deposits that generally must be accorded next-day availability under § 229.10. This subpart does not specify the maximum time period within which the proceeds of [local and nonlocal] ►other◄ checks must be made available for withdrawal during the new account period.

VIII. Section 229.14 Payment of Interest

A. 229.14(a) In General

1. This section requires that a depositary bank begin accruing interest on interest-bearing accounts not later than the day on which the depositary bank receives credit for the funds deposited.[3] A depositary bank generally receives credit on checks [within one or two days] ►on the business day◄ following deposit. A bank receives credit on a cash deposit, an electronic payment, and the deposit of a check that is drawn on the depositary bank itself on the day the cash, electronic payment, or check is received. In the case of a deposit at a nonproprietary ATM, credit generally is received on the day the bank that operates the ATM credits the depositary bank for the amount of the deposit. In the case of a deposit at a contractual branch, credit is received on the day the depositary bank receives credit for the amount of the deposit, which may be different from the day the contractual branch receives credit for the deposit.

[3] ►2.◄ This section implements section 606 of the EFA Act (12 U.S.C. 4005). The EFA Act keys the requirement to pay interest to the time the depositary bank receives provisional credit for a check. [Provisional credit is a term used in the U.C.C. that is derived from the Code's concept of provisional settlement. (*See* U.C.C. 4–214 and 4–215.)] Provisional credit is credit that is subject to charge-back if the check is returned unpaid; once the check is finally paid, the right to charge back expires and the provisional credit becomes final ►(*See* U.C.C. 4–214 and 4–215)◄. Under [S]►s◄ubpart C, a paying bank no longer has an automatic right to charge back credits given in settlement of a check, and the concept of provisional settlement is no longer useful and has been eliminated by the regulation. Accordingly, this section uses the term credit rather than provisional credit, and this section applies regardless of whether a credit would be provisional or final under the U.C.C. Credit does not include a bookkeeping entry (sometimes referred to as deferred credit) that does not represent funds actually available for the bank's use.

[2]►3◄. Because account includes only transaction accounts, other interest-bearing accounts of the depositary bank, such as money market deposit accounts, savings deposits, and time deposits, are not subject to this requirement; however, a bank may accrue interest on such deposits in the same way that it accrues interest under this paragraph for simplicity of operation. The [Board intends the] term interest [to] refer►s◄ to payments to or for the account of any customer as compensation for the use of funds, but [to] exclude►s◄ the absorption of expenses incident to providing a normal banking function or a bank's forbearance from charging a fee in connection with such a service. [(*See* 12 CFR 217.2(d).)] Thus, earnings credits often applied to corporate accounts are not interest payments for the purposes of this section.

[3]►4◄. It may be difficult for a depositary bank to track which day [the depositary bank]►it◄ receives credit for specific checks in order to accrue interest properly on the account to which the check is deposited. This difficulty may be pronounced if the bank uses different means of collecting checks based on the time of day the check is received, the dollar amount of the check, and/or the paying bank to which it must be sent. Thus, for the purpose of the interest accrual requirement, a bank may rely on an availability schedule from its Federal Reserve Bank[, Federal Home Loan Bank,] or correspondent to determine when the depositary bank receives credit. If availability is delayed beyond that specified in the availability schedule, a bank may charge back interest erroneously accrued or paid on the basis of that schedule.

[4]►5◄. This paragraph also permits a depositary bank to accrue interest on checks deposited to all of its interest-bearing accounts based on when the bank receives credit on all checks sent for payment or collection. For example, if a bank receives credit on 20 percent of the funds deposited in the bank by check as of the business day of deposit (*e.g.,* "on us" checks), 70 percent as of the business day following deposit, and 10 percent on the second business day following deposit, the bank can apply these percentages to determine the day interest must begin to accrue on check deposits to all interest-bearing accounts, regardless of when the bank received credit on the funds deposited in any particular account. Thus, a bank may begin accruing interest on a uniform basis for all interest-bearing accounts, without the need to track the type of check deposited to each account.

[5]►6◄. This section is not intended to limit a policy of a depositary bank that provides that interest accrues only on balances that exceed a specified amount, or on the minimum balance maintained in the account during a given period, provided that the balance is determined based on the date that the depositary bank receives credit for the funds. This section also is not intended to limit any policy providing that interest accrues sooner than required by this paragraph.

B. 229.14(b) Special Rule for Credit Unions

1. This provision implements a requirement in section 606(b) of the EFA Act, and provides an exemption from the payment-of-interest requirements for credit unions that do not begin to accrue interest or dividends on their customer accounts until a later date than the day the credit union receives credit for those deposits, including cash deposits. These credit unions are exempt from the payment-of-interest requirements, as long as they provide notice of their interest accrual policies in accordance with § 229.16(d). For example, if a credit union has a policy of computing interest on all deposits received by the 10th of the month from the first of that month, and on all deposits received after the 10th of the month from the first of the next month, that policy is not superseded by this regulation, if the credit union provides proper disclosure of this policy to its customers.

2. The EFA Act limits this exemption to credit unions; other types of banks must comply with the payment-of-interest requirements. In addition, credit unions that compute interest from the day of deposit or day of credit should not change their existing practices in order to avoid compliance with the requirement that interest accrue from the day the credit union receives credit.

C. 229.14(c) Exception for Checks Returned Unpaid

1. This provision is based on section 606(c) of the EFA Act (12 U.S.C. 4005(c)) and provides that interest need not be paid on funds deposited in an interest-bearing account by check that has been returned unpaid, regardless of the reason for return.

IX. Section 229.15 General Disclosure Requirements

A. 229.15(a) Form of Disclosures ►and Notices◄

1. This paragraph sets forth the general requirements for the disclosures ►and

notices◄ required under [S]►s◄ubpart B. All of the disclosures ►and notices◄ must be given in a clear and conspicuous manner, must be in writing, and, in most cases, must be in a form the customer may keep. A disclosure ►or notice◄ is in a form that the customer may keep if, for example, it can be downloaded or printed. For a customer that is not a consumer, a depositary bank satisfies the written-disclosure ►or notice◄ requirement by sending an electronic disclosure ►or notice◄ that displays the text and is in a form that the customer may keep, if the customer agrees to such means of disclosure ►or notice◄. For a customer who is a consumer, a depositary bank satisfies the written-►disclosure or◄ notice requirement by sending an electronic ►disclosure or◄ notice in compliance with the requirements of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001 *et seq.*), which include obtaining the consumer's affirmative consent to such means of ►disclosure or◄ notice. Disclosures posted at locations where employees accept consumer deposits, at ATMs, and on preprinted deposit slips need not be in a form that the customer may keep. Appendix C of the regulation contains model forms, clauses, and notices to assist banks in preparing disclosures.

2. Disclosures concerning availability must be grouped together and may not contain any information that is not related to the disclosures required by this subpart. Therefore, banks may not intersperse the required disclosures with other account disclosures, and may not include other account information that is not related to their availability policy within the text of the required disclosures. Banks may, however, include information that is related to their availability policies. For example, a bank may inform its customers that, even when the bank has already made funds available for withdrawal, the customer is responsible for any problem with the deposit, such as the return of a deposited check. ►*See* Model Forms C1–C4.◄

3. The regulation does not require that the disclosures be segregated from other account terms and conditions. For example, banks may include the disclosure of their specific availability policy in a booklet or pamphlet that sets out all of the terms and conditions of the bank's accounts. The required disclosures must, however, be grouped together and highlighted or identified in some manner, for example, by use of a separate heading for the disclosures, such as "When Deposits are Available for Withdrawal."

4. A bank may, by agreement or at the consumer's request, provide any disclosure or notice required by subpart B in a language other than English, provided that the bank makes a complete disclosure available in English at the customer's request.

B. 229.15(b) [Uniform] Reference to Day of Availability

1. This paragraph requires banks to disclose in a uniform manner when deposited funds will be available for withdrawal. Banks must disclose when deposited funds are available for withdrawal by stating the business day on which the customer may begin to withdraw funds ►in relation to the banking day on which the bank received the deposit◄. [The business day funds will be available must be disclosed as "the _____ business day after" the day of deposit, or substantially similar language.] The business day of availability is determined by counting the number of business days starting with the [business day following the] banking day on which the deposit is received, as determined under § 229.19(a), and ending with the business day on which the customer may begin to withdraw funds. For example, a bank that ►makes electronic direct deposits available on the banking day they are received may describe the deposits as being available "the same business day." A bank that makes check deposits available on the business day after the banking day they are received may describe the deposits as being available "the next day." A bank that◄ imposes delays of [four]►one◄ intervening business day[s] ►between the banking day of receipt and the business day of availability◄ for [nonlocal] checks must describe those checks as being available on "the [fifth] ►second◄ business day after" the day of the deposit ►or "2 business days" after the day of the deposit◄.

C. 229.15(c) Multiple Accounts and Multiple Account Holders

1. This paragraph clarifies that banks need not provide multiple disclosures under the regulation. A single disclosure to a customer that holds multiple accounts, or a single disclosure to one of the account holders of a jointly held account, satisfies the disclosure requirements of the regulation.

D. 229.15(d) Dormant or Inactive Accounts

1. This paragraph makes clear that banks need not provide disclosure of their specific availability policies to customers that hold accounts that are either dormant or inactive. The determination that certain accounts are dormant or inactive must be made by the bank. If a bank considers an account dormant or inactive for purposes other than this regulation and no longer provides statements and other mailings to an account for this reason, such an account is considered dormant or inactive for purposes of this regulation.

X. Section 229.16 Specific Availability Policy Disclosure

A. 229.16(a) General

1. This section describes the information that must be disclosed by banks to comply with §§ 229.17 and 229.18(d), which require that banks furnish notices of their specific policy regarding availability of deposited funds. The disclosure provided by a bank must reflect the availability policy followed by the bank in most cases, even though a bank may in some cases make funds available sooner or impose a longer delay.

2. The disclosure must reflect the policy and practice of the bank regarding availability as to most accounts and most deposits into those accounts. In disclosing the availability policy that it follows in most cases, a bank may provide a single disclosure that reflects one policy to all its transaction account customers, even though some of its customers may receive faster availability than that reflected in the policy disclosure. Thus, a bank need not disclose to some customers that they receive faster availability than indicated in the disclosure. If, however, a bank has a policy of imposing delays in availability on any customers longer than those specified in its disclosure, those customers must receive disclosures that reflect the longer applicable availability periods. A bank may establish different availability policies for different groups of customers, such as customers in a particular geographic area or customers of a particular branch. For purposes of providing a specific availability policy, the bank may allocate customers among groups through good faith use of a reasonable method. A bank may also establish different availability policies for deposits at different locations, such as deposits at a contractual branch.

3. A bank may disclose that funds are available for withdrawal on a given day notwithstanding the fact that the bank uses the funds to pay checks received before that day. For example, a bank may disclose that its policy is to make funds available from deposits of [local] checks on the second business day following the day of deposit, even though it may use the deposited funds to pay checks prior to the second business day; the funds used to pay checks in this example are not available for withdrawal until the second business day after deposit because the funds are not available for all uses until the second business day. (*See* the definition of available for withdrawal in § 229.2(d).)

B. 229.16(b) Content of Specific Policy Disclosure

1. This paragraph sets forth the items that must be included, as applicable, in a bank's specific availability policy disclosure. The information that must be disclosed by a particular bank will vary considerably depending upon the bank's availability policy. For example, a bank that makes deposited funds available for withdrawal on the business day following the day of deposit need simply disclose that deposited funds will be available for withdrawal on the first business day after the day of deposit, the bank's business days, and when deposits are considered received.

2. On the other hand, a bank that has a policy of routinely delaying on a blanket basis the time when ►some◄ deposited funds are available for withdrawal would have a more detailed disclosure. Such blanket hold policies might be for the maximum time allowed under [the federal law] ►this regulation◄ or might be for shorter periods. These banks must disclose the types of deposits that will be subject to delays, how the customer can determine the type of deposit being made, and the day that funds from each type of deposit will be available for withdrawal.

3. Some banks may have a combination of next-day availability and blanket delays. For example, a bank may provide next-day availability for all deposits except for one or two categories, such as deposits at nonproprietary ATMs and [nonlocal] personal checks over a specified dollar amount. The bank would describe the categories that are subject to delays in

availability and tell the customer when each category would be available for withdrawal, and state that other deposits will be available for withdrawal on the first business day after the day of deposit. Similarly, a bank that provides availability on the second business day for most of its deposits would need to identify the categories of deposits which, under the regulation, are subject to next-day availability and state that all other deposits will be available on the second business day.

4. [Because many banks' availability policies may be complex, a bank must give a brief summary of its policy at the beginning of the disclosure. In addition, t]►T◄he bank must describe any circumstances when actual availability may be longer than the schedules disclosed. Such circumstances would arise, for example, when the bank invokes one of the exceptions set forth in § 229.13 of the regulation, or when the bank delays or extends the time when deposited funds are available for withdrawal up to the time periods allowed by the regulation on a case-by-case basis. [Also, a bank that must make certain checks available faster under appendix B (reduction of schedules for certain nonlocal checks) must state that some check deposits will be available for withdrawal sooner because of special rules and that a list of the pertinent routing numbers is available upon request.]

[5. Generally, a bank that distinguishes in its disclosure between local and nonlocal checks based on the routing number on the check must disclose to its customers that certain checks, such as some credit union payable-through drafts, will be treated as local or nonlocal based on the location of the bank by which they are payable (e.g., the credit union), and not on the basis of the location of the bank whose routing number appears on the check. A bank is not required to provide this disclosure, however, if it makes the proceeds of both local and nonlocal checks available for withdrawal within the time periods required for local checks in §§ 229.12 and 229.13.]

[6]►5◄. The business day cut-off time used by the bank must be disclosed and if some locations have different cut-off times the bank must note this in the disclosure and state the earliest time that might apply. A bank need not list all of the different cut-off times that might apply. If a bank does not have a cut-off time prior to its closing time, the bank need not disclose a cut-off time.

[7]►6◄. A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under § 229.12[(f)]►(d)◄ must explain this in the initial disclosure. In addition, the bank must provide a list (on or with the initial disclosure) of either the bank's proprietary ATMs or those ATMs that are nonproprietary at which customers may make deposits. As an alternative to providing such a list, the bank may label all of its proprietary ATMs with the bank's name and state in the initial disclosure that this has been done. Similarly, a bank taking advantage of the cash withdrawal limitations of § 229.12 [(d)]►(b)◄, or the provision in § 229.19(e) allowing holds to be placed on other deposits when a deposit is made or a check is cashed, must explain this in the initial disclosure.

[8]►7◄. A bank that provides availability based on when the bank generally receives credit for deposited checks need not disclose the time when a check drawn on a specific bank will be available for withdrawal. Instead, the bank may disclose the categories of deposits that must be available on the first business day after the day of deposit (deposits subject to § 229.10) and state the other categories of deposits and the time periods that will be applicable to those deposits. [For example, a bank might disclose the four-digit Federal Reserve routing symbol for local checks and indicate that such checks as well as certain nonlocal checks will be available for withdrawal on the first or second business day following the day of deposit, depending on the location of the particular bank on which the check is drawn, and disclose that funds from all other checks will be available on the second or third business day. The bank must also disclose that the customer may request a copy of the bank's detailed schedule that would enable the customer to determine the availability of any check and must provide such schedule upon request. A change in the bank's detailed schedule would not trigger the change in policy disclosure requirement of § 229.18(e).]

C. 229.16(c) Longer Delays on a Case-by-Case Basis

1. Notice in specific policy disclosure.

a. Banks that make deposited funds available for withdrawal sooner than required by the regulation—for example, providing their customers with immediate or next-day availability for deposited funds—and delay the time when funds are available for withdrawal only from time to time determined on a case-by-case basis, must provide notice of this in their specific availability policy disclosure. This paragraph outlines the requirements for that notice.

b. In addition to stating what their specific availability policy is in most cases, banks that may delay or extend the time when deposits are available on a case-by-case basis must state that from time to time funds may be available for withdrawal later than the time periods in their specific policy disclosure, disclose the latest time that a customer may have to wait for deposited funds to be available for withdrawal when a case-by-case hold is placed, state that customers will be notified when availability of a deposit is delayed on a case-by-case basis, and advise customers to ask if they need to be sure of the availability of a particular deposit.

c. A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of this regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required by § 229.12 for [local and nonlocal] checks, the reason for the delay need not be based on the exceptions provided in § 229.13. If the delay exceeds the time periods permitted under § 229.12, however, then it must be based on an exception provided in § 229.13, and the bank must comply with the § 229.13 notice requirements. A bank that imposes delays on a case-by-case basis may avail itself of the one-time notice provisions in § 229.13(g)(2) and (3) for deposits to which those provisions apply.

2. Notice at time of case-by-case delay.

a. In addition to including the disclosures required by paragraph (c)(1) of this section in their specific availability policy disclosure, banks that delay or extend the time period when funds are available for withdrawal on a case-by-case basis must give customers a ►written◄ notice when availability of funds from a particular deposit will be delayed or extended beyond the time when deposited funds are generally available for withdrawal. The notice must state that a delay is being imposed and indicate when the funds will be available. In addition, the notice must include [the] ►a number or code that identifies the customer's◄ account [number], the date of the deposit, ►the total amount of the deposit,◄ [and] the amount of the deposit being delayed►, and the day the funds will be available for withdrawal.◄

b. If notice of the delay was not given at the time the deposit was made and the bank assesses overdraft or returned check fees on accounts when a case-by-case hold has been placed, the case-by-case hold notice provided to the customer must include a notice concerning overdraft or returned check fees. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that result from the deposited funds not being available if the check that was deposited was in fact paid by the payor bank, and explain how to request a refund of any fees. (*See* § 229.16(c)(3).)

c. The requirement that the case-by-case hold notice state the day that funds will be made available for withdrawal may be met by stating the date or the number of business days after deposit that the funds will be made available. This requirement is satisfied if the notice provides information sufficient to indicate when funds will be available and the amounts that will be available at those times. For example, for a deposit involving more than one check, the bank need not provide a notice that discloses when funds from each individual item in the deposit will be available for withdrawal. Instead, the bank may provide a total dollar amount for each of the time periods when funds will be available, or provide the customer with an explanation of how to determine the amount of the deposit that will be held and when the held funds will be available for withdrawal.

d. For deposits made in person to an employee of the depositary bank, the notice generally must be given at the time of the deposit. The notice at the time of the deposit must be given to the person making the deposit, that is, the "depositor." The depositor need not be the customer holding the account. For other deposits, such as deposits received at an ATM, lobby deposit box, night depository, through the mail, or by armored car, notice must be [mailed] ►sent◄ to the customer not later than the close of the business day following the banking day on which the deposit was made. Notice to the customer also [may] ►must◄ be [provided] ►sent◄ not later than the close of the business day following the banking day on which the deposit was made if the decision to delay availability is made after the time of the deposit. ►If the

customer has agreed to accept notices electronically, the bank shall send the notice such that the bank may reasonably expect it to be received by the customer not later than the first business day following the banking day the deposit is made.◄

3. Overdraft and returned check fees. If a depositary bank delays or extends the time when funds from a deposited check are available for withdrawal on a case-by-case basis and does not provide a written notice to its depositor at the time of deposit, the depositary bank may not assess any overdraft or returned check fees (such as an insufficient funds charge) or charge interest for use of an overdraft line of credit, if the deposited check is paid by the paying bank and these fees would not have occurred had the additional case-by-case delay not been imposed. A bank may assess an overdraft or returned check fee under these circumstances, however, if it provides notice to the customer in the notice required by paragraph (c)(2) of this section that the fee may be subject to refund, and refunds the fee upon the request of the customer when required to do so. The notice must state that the customer may be entitled to a refund of any overdraft or returned check fees that are assessed if the deposited check is paid, and indicate where such requests for a refund of overdraft fees should be directed. Paragraph (c)(3) applies when a bank provides a case-by-case notice in accordance with paragraph (c)(2) and does not apply if the bank has provided an exception hold notice in accordance with § 229.13.

D. 229.16(d) Credit Union Notice of Interest Payment Policy

1. This paragraph sets forth the special disclosure requirement for credit unions that delay accrual of interest or dividends for all cash and check deposits beyond the date of receiving provisional credit for checks being deposited. (The interest payment requirement is set forth in § 229.14(a).) Such credit unions are required to describe their policy with respect to accrual of interest or dividends on deposits in their specific availability policy disclosure.

XI. Section 229.17 Initial Disclosures

A. This paragraph requires banks to provide a notice of their availability policy to all potential customers prior to opening an account. The requirement of a notice prior to opening an account requires banks to provide disclosures prior to accepting a deposit to open an account. Disclosures must be given at the time the bank accepts an initial deposit regardless of whether the bank has opened the account yet for the customer. If a bank, however, receives a written request by mail from a person asking that an account be opened and the request includes an initial deposit, the bank may open the account with the deposit, provided the bank [mails] ►sends◄ the required disclosures to the customer not later than the business day following the banking day on which the bank receives the deposit. Similarly, if a bank receives a telephone request from a customer asking that an account be opened with a transfer from a separate account of the customer's at the bank, the disclosure may be mailed not later than the business day following the banking day of the request.

XII. Section 229.18 Additional Disclosure Requirements

A. 229.18(a) Deposit Slips

1. This paragraph requires banks to include a notice on all preprinted deposit slips. The deposit slip notice need only state, somewhere on the front of the deposit slip, that deposits may not be available for immediate withdrawal. The notice is required only on preprinted deposit slips—those printed with the customer's account number and name and furnished by the bank in response to a customer's order to the bank. A bank need not include the notice on deposit slips that are not preprinted and supplied to the customer—such as counter deposit slips—or on those special deposit slips provided to the customer under § 229.10(c). A bank is not responsible for ensuring that the notice appear►s◄ on deposit slips that the customer does not obtain from or through the bank. [This paragraph applies to preprinted deposit slips furnished to customers on or after September 1, 1988.]

* * * * *

E. 229.18(e) Changes in Policy

1. This paragraph requires banks to send notices to their customers when the banks change their availability policies with regard to consumer accounts. A notice may be given in any form as long as it is clear and conspicuous. If the bank gives notice of a change by sending the customer a complete new availability disclosure, the bank must direct the customer to the changed terms in the disclosure by use of a letter or insert, or by highlighting the changed terms in the disclosure.

2. Generally, a bank must send a notice at least 30 calendar days before implementing any change in its availability policy. If the change results in faster availability of deposits[—for example, if the bank changes its availability for nonlocal checks from the fifth business day after deposit to the fourth business day after deposit—] the bank need not send advance notice. The bank must, however, send notice of the change no later than 30 calendar days after the change is implemented. [A bank is not required to give a notice when there is a change in appendix B (reduction of schedules for certain nonlocal checks).]

3. A bank that has provided its customers with a list of ATMs under § 229.16(b)(5) shall provide its customers with an updated list of ATMs once a year if there are changes in the list of ATMs previously disclosed to the customers.

XIII. Section 229.19 Miscellaneous

A. 229.19(a) When Funds Are Considered Deposited

1. The time funds must be made available for withdrawal under this subpart is determined by the day the deposit is made. This paragraph provides rules to determine the day funds are considered deposited in various circumstances.

2. Staffed facilities and ATMs. Funds received at a staffed teller station or ATM are considered deposited when received by the teller or placed in the ATM. Funds received at a contractual branch are considered deposited when received by a teller at the contractual branch or deposited into a proprietary ATM of the contractual branch. (*See* also, Commentary to § 229.10(c) on deposits made to an employee of the depositary bank.) Funds deposited to a deposit box in a bank lobby that is accessible to customers only during regular business hours generally are considered deposited when placed in the lobby box; a bank may, however, treat deposits to lobby boxes the same as deposits to night depositories (as provided in § 229.19(a)(3)), provided a notice appears on the lobby box informing the customer when such funds will be considered deposited.

3. Mail. Funds mailed to the depositary bank are considered deposited on the banking day they are received by the depositary bank. The funds are received by the depositary bank at the time the mail is delivered to the bank, even if it is initially delivered to a mail room, rather than the check processing area.

4. Other facilities.

a. In addition to deposits at staffed facilities, at ATMs, and by mail, funds may be deposited at a facility such as a night depository or a lock box. A night depository is a receptacle for receipt of deposits, typically used by corporate depositors when the branch is closed. Funds deposited at a night depository are considered deposited on the banking day the deposit is removed, and the contents of the deposit are accessible to the depositary bank for processing. For example, some businesses deposit their funds in a locked bag at the night depository late in the evening, and return to the bank the following day to open the bag. Other depositors may have an agreement with their bank that the deposit bag must be opened under the dual control of the bank and the depositor. In these cases, the funds are considered deposited when the customer returns to the bank and opens the deposit bag.

b. A lock box is a post office box used by a corporation for the collection of bill payments or other check receipts. The depositary bank generally assumes the responsibility for collecting the mail from the lock box, processing the checks, and crediting the corporation for the amount of the deposit. Funds deposited through a lock box arrangement are considered deposited on the day the deposit is removed from the lock box and are accessible to the depositary bank for processing.

5. Certain off-premise ATMs. A special provision is made for certain off-premise ATMs that are not serviced daily. Funds deposited at such an ATM are considered deposited on the day they are removed from the ATM, if the ATM is not serviced more than two times each week. This provision is intended to address the practices of some banks of servicing certain remote ATMs infrequently. If a depositary bank applies this provision with respect to an ATM, a notice must be posted at the ATM informing depositors that funds deposited at the ATM may not be considered deposited until a future day, in accordance with § 229.18.

6. Banking day of deposit.

a. This paragraph also provides that a deposit received on a day that the depositary bank is closed, or after the bank's cut-off hour, may be considered made on the next banking day. Generally, for purposes of the availability schedules of this subpart, a bank may establish a cut-off hour of 2►:00◄ p.m. or later for receipt of deposits at its head office or branch offices. For receipt of deposits at ATMs, contractual branches, or other off-premise facilities, such as night depositories or lock boxes, the depositary bank may establish a cut-off hour of 12 noon or later (either local time of the branch or other location of the depositary bank at which the account is maintained or local time of the ATM, contractual branch, or other off-premise facility). The depositary bank must use the same timing method for establishing the cut-off hour for all ATMs, contractual branches, and other off-premise facilities used by its customers. The choice of cut-off hour must be reflected in the bank's internal procedures, and the bank must inform its customers of the cut-off hour upon request. This earlier cut-off for ATM, contractual branch, or other off-premise deposits is intended to provide greater flexibility in the servicing of these facilities.

b. Different cut-off hours may be established for different types of deposits. For example, a bank may establish a 2►:00◄ p.m. cut-off for the receipt of check deposits, but a later cut-off for the receipt of wire transfers. Different cut-off hours also may be established for deposits received at different locations. For example, a different cut-off may be established for ATM deposits than for over-the-counter deposits, or for different teller stations at the same branch. With the exception of the 12►:00◄ noon cut-off for deposits at ATMs and off-premise facilities, no cut-off hour for receipt of deposits for purposes of this subpart can be established earlier than 2►:00◄ p.m.

c. A bank is not required to remain open until 2►:00◄ p.m. If a bank closes before 2►:00◄ p.m., deposits received after the closing may be considered deposited on the next banking day. Further, as § 229.2(f) defines the term banking day as the portion of a business day on which a bank is open to the public for substantially all of its banking functions, a day, or a portion of a day, is not necessarily a banking day merely because the bank is open for only limited functions, such as keeping drive-in or walk-up teller windows open, when the rest of the bank is closed to the public. For example, a banking office that usually provides a full range of banking services may close at 12►:00◄ noon but leave a drive-in teller window open for the limited purpose of receiving deposits and making cash withdrawals. Under those circumstances, the bank is considered closed and may consider deposits received after 12►:00◄ noon as having been received on the next banking day. The fact that a bank may reopen for substantially all of its banking functions after 2►:00◄ p.m., or that it continues its back office operations throughout the day, would not affect this result. A bank may not, however, close individual teller stations and reopen them for next-day's business before 2►:00◄ p.m. during a banking day.

B. 229.19(b) Availability at Start of Business Day

1. If funds must be made available for withdrawal on a business day ►under subpart B◄, the funds must be available for withdrawal by the later of 9►:00◄ a.m. or the time the depositary bank's teller facilities, including ATMs, are available for customer account withdrawals, except under the special rule for cash withdrawals set forth in § 229.12[(d)]►(b)◄. Thus, if a bank has no ATMs and its branch facilities are available for customer transactions beginning at 10►:00◄ a.m., funds must be available for customer withdrawal beginning at 10►:00◄ a.m. If the bank has ATMs that are available 24 hours a day, rather than establishing 12:01 a.m. as the start of the business day, this paragraph sets 9►:00◄ a.m. as the start of the day with respect to ATM withdrawals. The Board believes that this rule provides banks with sufficient time to update their accounting systems to reflect the available funds in customer accounts for that day.

2. The start of business is determined by the local time of the branch or other location of the depositary bank at which the account is maintained. For example, if funds in a customer's account at a west coast bank are first made available for withdrawal at the start of business on a given day, and the customer attempts to withdraw the funds at an east coast ATM, the depositary bank is not required to make the funds available until 9►:00◄ a.m. [west coast time] (12►:00◄ noon [east coast] ►Eastern◄ time).

C. 229.19(c) Effect on Policies of Depositary Bank

1. This subpart establishes the maximum hold that may be placed on customer deposits. A depositary bank may provide availability to its customers in a shorter time than prescribed in this subpart. A depositary bank also may adopt different funds availability policies for different segments of its customer base, as long as each policy meets the schedules in the regulation. For example, a bank may differentiate between its corporate and consumer customers, or may adopt different policies for its consumer customers based on whether a customer has an overdraft line of credit associated with the account.

2. This regulation does not affect a depositary bank's right to accept or reject a check for deposit, to charge back the customer's account based on a returned check or notice of nonpayment, or to claim a refund for any credit provided to the customer. For example, even if a check is returned or a notice of nonpayment is received after the time by which funds must be made available for withdrawal in accordance with this regulation, the depositary bank may charge back the customer's account for the full amount of the check. [(See § 229.33(d) and Commentary.)]

3. Nothing in the regulation requires a depositary bank to have facilities open for customers to make withdrawals at specified times or on specified days. For example, even though the special cash withdrawal rule set forth in § 229.12[(d)]►(b)◄ states that a bank must make [up to $400 available for cash withdrawals]►the cash withdrawal amount available◄ no later than 5►:00◄ p.m. on specific business days, if a bank does not participate in an ATM system and does not have any teller windows open at or after 5►:00◄ p.m., the bank need not join an ATM system or keep offices open. In this case, the bank complies with this rule if the funds that are required to be available for cash withdrawal at 5►:00◄ p.m. on a particular day are available for withdrawal at the start of business on the following day. Similarly, if a depositary bank is closed for customer transactions, including ATMs, on a day funds must be made available for withdrawal, the regulation does not require the bank to open.

4. The special cash withdrawal rule in the EFA Act recognizes that the [$400]►the cash withdrawal amount◄ that must be made available for cash withdrawal by 5►:00◄ p.m. on the day specified in the schedule may exceed a bank's daily ATM cash withdrawal limit and explicitly provides that the EFA Act does not supersede a bank's policy in this regard. As a result, if a bank has a policy of limiting ►daily◄ cash withdrawals from automated teller machines to [$250 per day]►less than the cash withdrawal amount◄, the regulation would not require that the bank dispense [$400 of the proceeds of the customer's deposit]►the full amount◄ that must be made available for cash withdrawal on that day.

5. Even though the EFA Act clearly provides that the bank's ATM withdrawal limit is not superseded by the federal availability rules on the day funds must first be made available, the EFA Act does not specifically permit banks to limit cash withdrawals at ATMs on subsequent days when the entire amount of the deposit must be made available for withdrawal. The Board believes that the rationale behind the EFA Act's provision that a bank's ATM withdrawal limit is not superseded by the requirement that funds be made available for cash withdrawal applies on subsequent days. Nothing in the regulation prohibits a depositary bank from establishing ATM cash withdrawal limits that vary among customers of the bank, as long as the limit is not dependent on the length of time funds have been in the customer's account (provided that the permissible hold has expired).

6. Some small banks, particularly credit unions, due to lack of secure facilities, keep no cash on their premises and hence offer no cash withdrawal capability to their customers. Other banks limit the amount of cash on their premises due to bonding requirements or cost factors, and consequently reserve the right to limit the amount of cash each customer can withdraw over-the-counter on a given day. For example, some banks require advance notice for large cash withdrawals in order to limit the amount of cash needed to be maintained on hand at any time.

7. Nothing in the regulation is intended to prohibit a bank from limiting the amount of cash that may be withdrawn at a staffed teller station if the bank has a policy limiting the amount of cash that may be withdrawn, and if that policy is applied equally to all customers of the bank, is based on security,

operating, or bonding requirements, and is not dependent on the length of time the funds have been in the customer's account (as long as the permissible hold has expired). The regulation, however, does not authorize such policies if they are otherwise prohibited by statutory, regulatory, or common law.

D. 229.19(d) Use of Calculated Availability

1. A depositary bank may provide availability to its nonconsumer accounts on a calculated availability basis. Under calculated availability, a specified percentage of funds from check deposits may be made available to the customer on the next business day, with the remaining percentage deferred until ►the◄ subsequent day[s]. The determination of the percentage of deposited funds that will be made available each day is based on the customer's typical deposit mix as determined by a sample of the customer's deposits. Use of calculated availability is permitted only if, on average, the availability terms that result from the sample are equivalent to or more prompt than the requirements of this subpart.

E. 229.19(e) Holds on Other Funds

1. Section 607(d) of the EFA Act (12 U.S.C. 4006(d)) provides that once funds are available for withdrawal under the EFA Act, such funds shall not be frozen solely due to the subsequent deposit of additional checks that are not yet available for withdrawal. This provision of the EFA Act is designed to prevent evasion of the EFA Act's availability requirements.

2. This paragraph clarifies that if a customer deposits a check in an account (as defined in § 229.2(a)), the bank may not place a hold on any of the customer's funds so that the funds that are held exceed the amount of the check deposited or the total amount of funds held are not made available for withdrawal within the times required in this subpart. For example, if a bank places a hold on funds in a customer's non►-◄transaction account, rather than a transaction account, for deposits made to the customer's transaction account, the bank may place such a hold only to the extent that the funds held do not exceed the amount of the deposit and the length of the hold does not exceed the time periods permitted by this regulation.

3. These restrictions also apply to holds placed on funds in a customer's account (as defined in § 229.2(a)) if a customer cashes a check at a bank (other than a check drawn on that bank) over the counter. The regulation does not prohibit holds that may be placed on other funds of the customer for checks cashed over the counter, to the extent that the transaction does not involve a deposit to an account. ►When a customer cashes a check over the counter and the bank places a hold on an account of the customer, the bank must give whatever notice would have been required under §§ 229.13 or 229.16 had the check been deposited in the account.◄ A bank may not, however, place a hold on any account when an "on us" check is cashed over the counter. "On us" checks are considered finally paid when cashed (*see* U.C.C. 4–215(a)(1)). [When a customer cashes a check over the counter and the bank places a hold on an account of the customer, the bank must give whatever notice would have been required under §§ 229.13 or 229.16 had the check been deposited in the account.]

F. 229.19(f) Employee Training and Compliance

1. The EFA Act requires banks to take such actions as may be necessary to inform fully each employee that performs duties subject to the EFA Act of the requirements of the EFA Act, and to establish and maintain procedures reasonably designed to [assure]►ensure◄ and monitor employee compliance with such requirements.

2. This paragraph requires a bank to establish procedures to ensure compliance with these requirements and provide these procedures to the employees responsible for carrying them out.

G. 229.19(g) Effect of Merger Transaction

1. After banks merge, there is often a period of adjustment before their operations are consolidated. This paragraph accommodates this adjustment period by allowing merged banks to be treated as separate banks for purposes of this subpart for a period of up to one year after consummation of the merger transaction, except that a customer of any bank that is a party to the transaction that has an established account with that bank may not be treated as a new►-◄account holder for any other party to the transaction for purposes of the new►-◄account exception of § 229.13(a), and a deposit in any branch of the merged bank is considered deposited in the bank for purposes of the availability schedules in accordance with § 229.19(a).

2. This rule affects the status of the combined entity in several areas. For example, this rule would affect when an ATM is a proprietary ATM (§ 229.2[(aa)]►(kk)◄ and § 229.12[(b)]►(d)◄) and when a check is considered drawn on a branch of the depositary bank (§ 229.10(c)(1)(vi)).

3. Merger transaction is defined in § 229.2[(t)]►(dd)◄.

XIV. Section 229.20 Relation to State Law

A. 229.20(a) In General

1. Several states have enacted laws that govern when banks in those states must make funds available to their customers. The EFA Act provides that any state law in effect on September 1, 1989, that provides that funds be made available in a shorter period of time than provided in this regulation, will supersede the time periods in the EFA Act and the regulation. [The Conference Report on the EFA Act clarifies this provision by stating that any state law enacted on or before September 1, 1989, may supersede federal law to the extent that the law relates to the time funds must be made available for withdrawal. H.R. Rep. No. 261, 100th Cong. 1st Sess. at 182 (1987).]

2. Thus, if a state had wished to adopt a law governing funds availability, it had to have made that law effective on or before September 1, 1989. Laws adopted after that date do not supersede federal law, even if they provide for shorter availability periods than are provided under federal law. If a state that had a law governing funds availability in effect before September 1, 1989, amended its law after that date, the amendment would not supersede Federal law, but an amendment deleting a state requirement would be effective.

3. If a state provides for a shorter hold for a certain category of checks than is provided for under Federal law, that state requirement will supersede the federal provision. [For example, most state laws base some hold periods on whether the check being deposited is drawn on an in-state or out-of-state bank. If a state contains more than one check processing region, the state's hold period for in-state checks may be shorter than the Federal maximum hold period for nonlocal checks. Thus, the state schedule would supersede the Federal schedule to the extent that it applies to in-state, nonlocal checks.

4.] The EFA Act also provides that any state law that provides for availability in a shorter period of time than required by Federal law is applicable to all federally insured institutions in that state, including federally chartered institutions. If a state law provides shorter availability only for deposits in accounts in certain categories of banks, such as commercial banks, the superseding state law continues to apply only to those categories of banks, rather than to all federally insured banks in the state.

B. 229.20(b) Preemption of Inconsistent Law

1. This paragraph reflects the statutory provision that other provisions of state law that are inconsistent with federal law are preempted. Preemption does not require a determination by the Board to be effective.

C. 229.20(c) Standards for Preemption

1. This section describes the standards [the Board uses in]►for◄ making determinations on whether federal law will preempt state laws governing funds availability. A provision of state law is considered inconsistent with federal law if it permits a depositary bank to make funds available to a customer in a longer period of time than the maximum period permitted by the EFA Act and this regulation. For example, a state law that permits a hold of [four]►three◄ business days or longer for [local] checks permits a hold that is longer than that permitted under the EFA Act and this regulation, and therefore is inconsistent and preempted. State availability schedules that provide for availability in a shorter period of time than required under Regulation CC supersede the federal schedule.

2. Under a state law, some categories of deposits could be available for withdrawal sooner or later than the time required by this subpart, depending on the composition of the deposit. For example, the EFA Act and this regulation (§ 229.10(c)(1)(vii)) require next-day availability for [the first $100]►a minimum amount◄ of the aggregate deposit of [local or nonlocal] checks on any day, and a state law could require next-day availability for any check of [$100]►the minimum amount under § 229.10(c)◄ or less that is deposited. Under the EFA Act and this regulation, if ►on a given day◄ either one [$150] check ►that is greater than the minimum amount or three checks that are

each less than the minimum amount, but that combined are more than the minimum amount, are deposited◄[or three $50 checks are deposited on a given day], [$100] ►the minimum amount under § 229.10(c)◄ must be made available for withdrawal on the next business day, and [$50]►the remaining amount◄ must be made available in accordance with the [local or nonlocal] ►general◄ schedule. Under the state law, however, the two deposits would be subject to different availability rules. In the first case, none of the proceeds of the deposit would be subject to next-day availability; in the second case, the entire proceeds of the deposit would be subject to next-day availability. In this example, because the state law would, in some situations, permit a hold longer than the maximum permitted by the EFA Act, this provision of state law is inconsistent and preempted in its entirety.

3. In addition to the differences between state and federal availability schedules, a number of state laws contain exceptions to the state availability schedules that are different from those provided under the EFA Act and this regulation. The state exceptions continue to apply only in those cases where the state schedule is shorter than or equal to the federal schedule, and then only up to the limit permitted by the Regulation CC schedule. Where a deposit is subject to a state exception under a state schedule that is not preempted by Regulation CC and is also subject to a federal exception, the hold on the deposit cannot exceed the hold permissible under the federal exception in accordance with Regulation CC. In such cases, only one exception notice is required, in accordance with § 229.13(g). This notice need only include the applicable federal exception as the reason the exception was invoked. For those categories of checks for which the state schedule is preempted by the federal schedule, only the federal exceptions may be used.

4. State laws that provide maximum availability periods for categories of deposits that are not covered by the EFA Act would not be preempted. Thus, state funds availability laws that apply to funds in time and savings deposits are not affected by the EFA Act or this regulation. In addition, the availability schedules of several states apply to "items" deposited to an account. The term items may encompass ►types of◄ deposits [, such as nonnegotiable instruments,] that are not subject to the Regulation CC availability schedules. Deposits that are not covered by Regulation CC continue to be subject to the state availability schedules. State laws that provide maximum availability periods for categories of institutions that are not covered by the EFA Act also would not be preempted. For example, a state law that governs money market mutual funds would not be affected by the EFA Act or this regulation.

5. Generally, state rules governing the disclosure or notice of availability policies applicable to accounts also are preempted, if they are different from the federal rules. Nevertheless, a state law requiring disclosure of funds availability policies that apply to deposits other than "accounts," such as savings or time deposits, are not inconsistent with the EFA Act and this subpart. Banks in these states would have to follow the state disclosure rules for these deposits.

D. 229.20(d) Preemption Determinations

1. The Board may issue preemption determinations upon the request of an interested party in a state. The determinations will relate only to the provisions of [S]►s◄ubparts A and B; generally the Board will not issue individual preemption determinations regarding the relation of state U.C.C. provisions to the requirements of [S]►s◄ubpart C ►or D◄.

E. 229.20(e) Procedures for Preemption Determinations

1. This provision sets forth the information that must be included in a request by an interested party for a preemption determination [by the Board].

XV. Section 229.21 Civil Liability

A. 229.21(a) Civil Liability

1. This paragraph sets forth the statutory penalties for failure to comply with the requirements of this subpart. These penalties apply to provisions of state law that supersede provisions of this regulation, such as requirements that funds deposited in accounts at banks be made available more promptly than required by this regulation, but they do not apply to other provisions of state law. (*See* Commentary to § 229.20.)

B. 229.21(b) Class Action Awards

1. This paragraph sets forth the provision in the EFA Act concerning the factors that should be considered by the court in establishing the amount of a class action award.

C. 229.21(c) Bona Fide Errors

1. A bank is shielded from liability under this section for a violation of a requirement of this subpart if it can demonstrate, by a preponderance of the evidence, that the violation resulted from a bona fide error and that it maintains procedures designed to avoid such errors. For example, a bank may make a bona fide error if it fails to give next-day availability on a check drawn on the Treasury because the bank's computer system malfunctions in a way that prevents the bank from updating its customer's account[; or if it fails to identify whether a payable-through check is a local or nonlocal check despite procedures designed to make this determination accurately].

D. 229.21(d) Jurisdiction

1. The EFA Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

E. 229.21(e) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, model form, notice, or clause (if the disclosure actually corresponds to the bank's availability policy), or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on this Commentary, which is issued as an official Board interpretation, as well as on the regulation itself.

►2. This provision does not shield a bank from civil liability if the bank relies on earlier versions of the model forms (*i.e.,* those not currently in appendix C) after [*date that is 12 months after the effective date of the rule*].◄

F. 229.21(f) Exclusions

1. This provision clarifies that liability under this section does not apply to violations of the requirements of [S]►s◄ubpart C ►or D◄ of this regulation, or to actions for wrongful dishonor of a check by a paying bank's customer.

G. 229.21(g) Record Retention

1. Banks must keep records to show compliance with the requirements of this subpart for at least two years. This record retention period is extended in the case of civil actions and enforcement proceedings. Generally, a bank is not required to retain records showing that it actually has given disclosures or notices required by this subpart to each customer, but it must retain evidence demonstrating that its procedures reasonably ensure the customers' receipt of the required disclosures and notices. A bank must, however, retain a copy of each notice provided pursuant to its use of the reasonable►-◄cause exception under § 229.13(g) as well as a brief description of the facts giving rise to the availability of that exception.

XVI. Section 229.30 Paying Bank's Responsibility for Return of Checks

A. 229.30(a) Return of Checks

1. This section requires a paying bank (which, for purposes of [S]►s◄ubpart C, may include a payable-through and payable-at bank; see [§ 229.2(z)] ►§ 229.2(ii)◄) that determines not to pay a check to return the check expeditiously. [Generally, a check] ►A returned check, including the original check, substitute check, and electronic return,◄ is returned expeditiously if [the return process is as fast as the forward collection process. This paragraph provides two standards for expeditious return, the "two-day/four-day" test, and the "forward collection" test]►paying bank sends the return such that the depositary bank normally would receive the returned check no later than 4 p.m. (local time of the depositary bank) two business days after presentment to the paying bank. *See* § 229.30(b) and commentary thereto for the exceptions to this general rule. If the paying bank need not return the check expeditiously under § 229.30(a), the paying bank, nonetheless, must return the check within its deadlines under the Uniform Commercial Code, Regulation J (12 CFR part 210) or § 229.36(d)(2), or § 229.30(c) for returning the item or notice (*See* § 229.30(a)(4) and accompanying commentary).◄

[2. Under the "two-day/four-day" test, if a check is returned such that it would normally be received by the depositary bank two business days after presentment where both the paying and depositary banks are located in the same check processing region or four business days after presentment where the paying and depositary banks are not located in the same check processing region, the check is considered returned expeditiously. In certain limited cases,

however, these times are shorter than the time it would normally take a forward collection check deposited in the paying bank and payable by the depositary bank to be collected. Therefore, the Board has included a "forward collection" test, whereby a check is nonetheless considered to be returned expeditiously if the paying bank uses transportation methods and banks for return comparable to those used for forward collection checks, even if the check is not received by the depositary banks within the two-day or four-day period.

3. Two-day/four-day test.

a. Under the first test, a paying bank must return the check so that the check would normally be received by the depositary bank within specified times, depending on whether or not the paying and depositary banks are located in the same check processing region.

b. Where both banks are located in the same check processing region, a check is returned expeditiously if it is returned to the depositary bank by 4 p.m. (local time of the depositary bank) of the second business day after the banking day on which the check was presented to the paying bank. For example, a check presented on Monday to a paying bank must be returned to a depositary bank located in the same check processing region by 4 p.m. on Wednesday. For a paying bank that is located in a different check processing region than the depositary bank, the deadline to complete return is 4 p.m. (local time of the depositary bank) of the fourth business day after the banking day on which the check was presented to the paying bank. For example, a check presented to such a paying bank on Monday must be returned to the depositary bank by 4 p.m. on Friday.

c. This two-day/four-day test does not necessarily require actual receipt of the check by the depositary bank within these times. Rather, the paying bank must send the check so that the check would normally be received by the depositary bank within the specified time. Thus, the paying bank is not responsible for unforeseeable delays in the return of the check, such as transportation delays.]

[d]►2◄. [Often, returned checks will be delivered to the depositary bank together with forward collection checks.] Where the last day on which a check could be delivered to a depositary bank under [this two-day/four-day test] § 229.30(a) is not a banking day for the depositary bank, [a returning bank might not schedule delivery of forward collection checks to the depositary bank on that day. Further,] the depositary bank may not process checks on that day. Consequently, if the last day of the time limit business day following the banking day after which the check was presented is not a banking day for the depositary bank, the check electronic return may be delivered to the depositary bank sent such that it is received by the depositary bank before the close of the depositary bank's next banking day and the return will still be considered expeditious. [Ordinarily, this extension of time will allow the returned checks to be delivered with the next shipment of forward collection checks destined for the depositary bank.]

[e. The times specified in this two-day/four-day test are based on estimated forward-collection times, but take into account the particular difficulties that may be encountered in handling checks. It is anticipated that the normal process of forward collection of a check coupled with these return requirements will result in the return of checks before the proceeds of local and nonlocal checks, other than those covered by section 229.10(c), must be made available for withdrawal.]

►3. In order to satisfy its expeditious return requirement, a paying bank may return either an electronic return or a paper check.◄

[f.] ►4.◄ [Under this two-day/four-day test, no] ►No◄ particular [means]►path◄ of returning checks is required, thus providing flexibility to paying banks in selecting [means]►the path◄ of return. The Board anticipates that paying banks will often use returning banks (*see* § 229.31) as their agents to return checks to depositary banks. A paying bank may rely on the availability schedule of the returning bank it uses in determining whether the returned check would "normally" be returned within the required time [under this two-day/four-day test], unless the paying bank has reason to believe that these schedules do not reflect the actual time for return of a check.

[4. Forward collection test.

a. Under the second, "forward collection," test, a paying bank returns a check expeditiously if it returns a check by means as swift as the means similarly situated banks would use for the forward collection of a check drawn on the depositary bank.

b. Generally, the paying bank would satisfy the "forward collection" test if it uses a transportation method and collection path for return comparable to that used for forward collection, provided that the returning bank selected to process the return agrees to handle the returned check under the standards for expeditious return for returning banks under § 229.31(a). This test allows many paying banks a simple means of expeditious return of checks and takes into account the longer time for return that will be required by banks that do not have ready access to direct courier transportation.

c. The paying bank's normal method of sending a check for forward collection would not be expeditious, however, if it is materially slower than that of other banks of similar size and with similar check handling activity in its community.

d. Under the "forward collection" test, a paying bank must handle, route, and transport a returned check in a manner designed to be at least as fast as a similarly situated bank would collect a forward collection check (1) of similar amount, (2) drawn on the depositary bank, and (3) received for deposit by a branch of the paying bank or a similarly situated bank by noon on the banking day following the banking day of presentment of the returned check.

e. This test refers to similarly situated banks to indicate a general community standard. In the case of a paying bank (other than a Federal Reserve Bank), a similarly situated bank is a bank of similar asset size, in the same community, and with similar check handling activity as the paying bank. (*See* § 229.2(ee).) A paying bank has similar check handling activity to other banks that handle similar volumes of checks for collection.

f. Under the forward collection test, banks that use means of handling returned checks that are less efficient than the means used by similarly situated banks must improve their procedures. On the other hand, a bank with highly efficient means of collecting checks drawn on a particular bank, such as a direct presentment of checks to a bank in a remote community, is not required to use that means for returned checks, i.e. direct return, if similarly situated banks do not present checks directly to that depositary bank.]

5. Examples.

►a. The depositary bank has agreed to accept electronic returns directly from a paying bank. If a check is presented to that paying bank on Monday, the paying bank must send the returned check such that the depositary bank normally would receive the returned check by 4 p.m. (local time of the depositary bank) on Wednesday.

b. The depositary bank has not agreed to accept electronic returns directly from the paying bank, but has agreed to accept electronic returns from Returning Bank A, which holds itself as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to handle returns expeditiously under § 229.31(a). If a check is presented to the paying bank on Monday, the paying bank must send the returned check such that the depositary bank normally would receive the returned check by 4:00 p.m. (local time of the depositary bank) on Wednesday. The paying bank may rely on Returning Bank A's schedules for sending returned checks in determining whether the depositary bank normally would receive the returned check by 4 p.m. on Wednesday.

c. The depositary bank has not agreed to accept electronic returns directly from the paying bank, but has agreed to accept electronic returns from Returning Bank A, which holds itself as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to handle returns expeditiously under § 229.31(a). Returning Bank A, however, does not have an agreement with the paying bank to accept returns; rather Returning Bank B has agreed to accept returns from the paying bank and to handle such returns expeditiously. Returning Bank A has agreed to accept returns from Returning Bank B. If a check is presented to the paying bank on Monday, the paying bank must send the returned check such that the depositary bank normally would receive the returned check by 4 p.m. (local time of the depositary bank) on Wednesday.

d. The depositary bank and paying bank are members of the same clearinghouse, through which both have agreed to accept electronic returns. If a check is presented to that paying bank on Monday, the paying bank must send an electronic return such that the depositary bank normally would receive the returned check by 4 p.m. (local time of the depositary bank) on Wednesday.

e. In each example, the paying bank must send the returned check such that the depositary bank normally would receive the check by 4 p.m. (local time of the depositary bank) on Wednesday. The paying bank may satisfy its obligation by sending either an electronic return or a paper check by such time. Additionally, if the paying bank sends the returned check in a manner such that the depositary bank normally would receive the returned check by 4 p.m. on Wednesday, but the depositary bank does not receive the returned check by that time due to an operational difficulty of the depositary bank or returning bank, the paying bank has satisfied its expeditious return requirement.◄

[If a check is presented to a paying bank on Monday and the depositary bank and the paying bank are participants in the same clearinghouse and the depositary bank has agreed to receive returns electronically through the clearinghouse, the paying bank should arrange to have the returned check received by the depositary bank by Wednesday. This would be the same day the paying bank would deliver a forward collection check to the depositary bank if the paying bank received the deposit by noon on Tuesday.]

[b. i. If a check is presented to a paying bank on Monday and the paying bank would normally collect checks drawn on the depositary bank by sending them to a correspondent or a Federal Reserve Bank by courier, the paying bank could send the returned check to its correspondent or Federal Reserve Bank, provided that the correspondent has agreed to handle returned checks expeditiously under § 229.31(a). (All Federal Reserve Banks agree to handle returned checks expeditiously.)

ii. The paying bank must deliver the returned check to the correspondent or Federal Reserve Bank by the correspondent's or Federal Reserve Bank's appropriate cut-off hour. The appropriate cut-off hour is the cut-off hour for returned checks that corresponds to the cut-off hour for forward collection checks drawn on the depositary bank that would normally be used by the paying bank or a similarly situated bank. A returned check cut-off hour corresponds to a forward collection cut-off hour if it provides for the same or faster availability for checks destined for the same depositary banks.

iii. In this example, delivery to the correspondent or a Federal Reserve Bank by the appropriate cut-off hour satisfies the paying bank's duty, even if use of the correspondent or Federal Reserve Bank is not the most expeditious means of returning the check. Thus, a paying bank may send a local returned check to a correspondent instead of a Federal Reserve Bank, even if the correspondent then sends the returned check to a Federal Reserve Bank the following day as a qualified returned check. Where the paying bank delivers forward collection checks by courier to the correspondent or the Federal Reserve Bank, mailing returned checks to the correspondent or Federal Reserve Bank would not satisfy the forward collection test.

iv. If a paying bank ordinarily mails its forward collection checks to its correspondent or Federal Reserve Bank in order to avoid the costs of a courier delivery, but similarly situated banks use a courier to deliver forward collection checks to their correspondent or Federal Reserve Bank, the paying bank must send its returned checks by courier to meet the forward collection test.

c. If a paying bank normally sends its forward collection checks directly to the depositary bank, which is located in another community, but similarly situated banks send forward collection checks drawn on the depositary bank to a correspondent or a Federal Reserve Bank, the paying bank would not have to send returned checks directly to the depositary bank, but could send them to a correspondent or a Federal Reserve Bank.

d. The dollar amount of the returned check has a bearing on how it must be returned. If the paying bank and similarly situated banks present large-dollar checks drawn on the depositary bank directly to the depositary bank, but use a Federal Reserve Bank or a correspondent to collect small-dollar checks, generally the paying bank would be required to send its large-dollar returns directly to the depositary bank (or through a returning bank, if the checks are returned as quickly), but could use a Federal Reserve Bank or a correspondent for its small-dollar returns.]

6. Choice of returning bank.

In meeting the requirements of [the forward collection test] ►§ 229.30(a)◄, the paying bank is responsible for its own actions, but not for those of the depositary bank or returning banks. (This is analogous to the responsibility of collecting banks under U.C.C. 4–202(c).) For example, if the paying bank starts the return of the check in a timely manner but return is delayed by a returning bank [(including delay to create a qualified returned check)], generally the paying bank has met its ►expeditious return◄ requirement[s]. (*See* § 229.38.) If, however, the paying bank selects a returning bank that the paying bank should know is not capable of meeting its return requirements, the paying bank will not have met its obligation of exercising ordinary care in selecting intermediaries to return the check. [The paying bank is free to use a method of return, other than its method of forward collection, as long as the alternate method results in delivery of the returned check to the depositary bank as quickly as the forward collection of a check drawn on the depositary bank or, where the returning bank takes a day to create a qualified returned check under § 229.31(a), one day later than the forward collection time.] If a paying bank returns a check on its banking day of receipt without settling for the check, as permitted under U.C.C. 4–302(a), and receives settlement for the returned check from a returning bank, it must promptly pay the amount of the check to the collecting bank from which it received the check.

[7. Qualified returned checks. Although paying banks may wish to prepare qualified returned checks because they will be handled at a lower cost by returning banks, the one business day extension provided to returning banks is not available to paying banks because of the longer time that a paying bank has to dispatch the check. Normally, paying banks will be able to convert a check to a qualified returned check at any time after the determination is made to return the check until late in the day following presentment, while a returning bank may receive returned checks late on one day and be expected to dispatch them early the next morning. A check that is converted to a qualified returned check must be encoded in accordance with ANS X9.13 for original checks or ANS X9.100–140 for substitute checks.]

[8]►7◄. Routing of returned checks.

a. [In effect, under either test, t[►T◄he paying bank acts as an agent or subagent of the depositary bank in selecting a means of return. Under § 229.30(a), a paying bank is authorized to route the returned check►, including an electronic return,◄ in a variety of ways:

i. It may send the returned check directly to the depositary bank by courier or other means of delivery[,] ►or it may send the electronic return directly to the depositary bank if the depositary bank has agreed to accept electronic returns from the paying bank, thereby◄ bypassing returning banks; or

ii. It may send the returned check ►or electronic return◄ to any returning bank agreeing to handle the returned check ►or electronic return◄ for expeditious return to the depositary bank under § 229.31(a), regardless of whether or not the returning bank handled the check for forward collection. ►In determining whether a depositary bank has agreed to accept an electronic return from a returning bank, a paying bank may rely on a returning bank's published list of depositary banks to which it delivers electronic returns.◄

b. If the paying bank elects to return the check directly to the depositary bank, it is not necessarily required to return the check to the branch of first deposit. The check may be returned to the depositary bank at any ►physical◄ location permitted under [§ 229.32(a)] ►§ 229.32(b). If the paying bank elects to send an electronic return directly to the depositary bank, it must send the electronic return to the electronic return point designated by the depositary bank◄.

9. Midnight deadline.

a. Except for the extension permitted by § 229.30(c), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under U.C.C. 4–301 and 4–302, which continue to apply. Under U.C.C. 4–302, a paying bank is "accountable" for the amount of a demand item, other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under U.C.C. 3–418(c) and 4–215(a), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, retaining this requirement gives the paying bank an additional incentive to make a prompt return.

b. The expeditious return requirement applies to a paying bank that determines not to pay a check. This requirement applies to a payable-through or a payable-at bank that is defined as a paying bank (*see* [§ 229.2(z)]►§ 229.2(ii)◄) and that returns

a check. This requirement begins when the payable-through or payable-at bank receives the check during forward collection, not when the payor returns the check to the payable-through or payable-at bank. Nevertheless, a check sent for payment or collection to a payable-through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of U.C.C. 4–301. (*See* discussion of [§ 229.36(a)]►§ 229.30(a)(5)◄.)

c. The liability section of this subpart (§ 229.38) provides that a paying bank is not subject to both "accountability" for missing the midnight deadline under the U.C.C. and liability for missing the timeliness requirements of this regulation. Also, a paying bank is not responsible for failure to make expeditious return to a party that has breached a presentment warranty under U.C.C. 4–208►.◄[, notwithstanding that the paying bank has returned the check. (*See* Commentary to § 229.33(a).)]

10. U.C.C. provisions affected. This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

a. Section 4–301(d), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depositary bank or to a returning bank.

b. Section 4–301(a), in that time limits specified in that section may be affected by the additional requirement to make an expeditious return and in that settlement for returned checks is made under § 229.31(c), not by revocation of settlement.

►11. Payable-through and payable at checks

a. For purposes of subpart C, the regulation defines a payable-through and or payable-at bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of § 229.30(a) are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. This provision is intended to speed the return of checks that are payable through or at a bank to the depositary bank.◄

B. 229.30(b) [Unidentifiable Depositary Bank]►Exceptions to Expeditious Return of Checks◄

1. ►This paragraph sets forth the circumstances under which a paying bank is not required to return the check to the depositary bank in accordance with § 229.30(a).◄

►2. The depositary bank has not agreed to accept electronic returns from the paying bank.

a. In the circumstances where a depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a), the paying bank should send a paper return directly to the depositary bank or send an electronic return to a returning bank, which would then be required to send a paper return to the depositary bank.

b. *Example.* The depositary bank has agreed to accept electronic returns from Returning Bank A. Returning Bank A does not hold itself out as accepting electronic returns from either the paying bank or other returning banks. Under these facts, the depositary bank has not agreed to accept electronic returns from the paying bank under § 229.32(a), and therefore the paying bank need not send the returned check expeditiously to the depositary bank. The paying bank, however, must comply with any deadlines under the Uniform Commercial Code, Regulation J (12 CFR part 210), or § 229.30(c).◄

3. Depositary bank without accounts

a. Subpart B of this regulation applies only to "checks" deposited in transaction "accounts." Thus, a depositary bank with only time or savings accounts need not comply with the availability requirements of subpart B. Collecting banks may not have an electronic connection with these banks as paying banks because no checks are drawn on them. Consequently, the costs of using expedited means to deliver returned checks directly to such a depositary bank may not be justified. Thus, the expeditious-return requirement of § 229.30(a) does not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in U.C.C. 4–301 and 4–302 [and]►,◄ § 210.12 of Regulation J (12 CFR 210.12)►, and the extension in § 229.30(c)◄ would continue to apply to these checks. Returning banks also would be required to act on such checks within their midnight deadline. Further, in order to avoid complicating the process of returning checks generally, banks without accounts are required to use the standard indorsement, and their checks are returned by returning banks and paid for by the depositary bank under the same rules as checks deposited in other banks, with the exception of the expeditious-return requirements of §§ 229.30(a) and 229.31(a).

b. The expeditious-return requirement applies to a check deposited in a bank that is not a depository institution. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not depository institutions within the meaning of the EFA Act, and therefore are not subject to the expedited availability and disclosure requirements of subpart B. These banks do, however, maintain accounts as defined in § 229.2(a), and a paying bank returning a check to one of these banks would be required to return the check to the depositary bank, in accordance with the expeditious-return requirement.

4. Unidentifiable depositary bank

a. For most checks presented electronically, the depositary bank's indorsement will accompany the electronic image and information related to the check, either as an addenda record or within the image of the check.◄ In some cases, a paying bank will be unable to identify the depositary bank through the use of ordinary care and good faith. The Board expects that these cases will be unusual as skilled return [clerks] ►staff generally◄ will readily identify the depositary bank from the depositary bank indorsement required under § 229.35 and appendix D. ►For example, a paying bank would be unable to identify the depositary bank if the depositary bank's indorsement is in neither an addenda record nor within the image of the check. A paying bank, however, would not be "unable" to identify the depositary bank merely because the depositary bank's indorsement is not attached as an addenda record, and therefore requires the paying bank to retrieve the image.◄

►b.◄ In cases where the paying bank is unable to identify the depositary bank, the paying bank may, in accordance with § 229.30(a), send the returned check to a returning bank that agrees to handle the returned check for expeditious return to the depositary bank under § 229.31(a). The returning bank may be better able to identify the depositary bank.

[2.]►c.◄ In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks normally will be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the paying bank may send such a returned check to any bank that handled the check for forward collection, even if that bank does not agree to handle the returned check for expeditious return to the depositary bank under § 229.31(a). ►The return of a check to a bank that handled the check for forward collection is consistent with § 229.35(b), which requires a bank handling a check to take up the check if it is has not been paid.◄

►d. If the paying bank has an agreement to send electronic returns to a bank that handled the check for forward collection, the paying bank may send an electronic return to that bank.◄ A paying bank returning a check under this paragraph [to a bank that has not agreed to handle the check expeditiously] must advise that bank that it is unable to identify the depositary bank. This advice must be conspicuous, such as a stamp on each check for which the depositary bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. ►In the case of an electronic return, the advice requirement may be satisfied by the paying bank inserting the routing number of the bank to which it is sending the return where the paying bank otherwise would have inserted the routing number of the depositary bank.◄ This information will warn the bank that this check will require special research and handling in accordance with § 229.31(b). The returned check may not be prepared [for automated] ►as a qualified◄ return. [The return of a check to a bank that handled the check for forward collection is consistent with § 229.35(b), which requires a bank handling a check to take up the check it is has not been paid.]

[3.]►e.◄ The sending of a check to a bank that handled the check for forward collection under this paragraph is not subject to the requirements for expeditious return by the paying bank. [Often, the paying bank will not have courier or other expeditious means of transportation to the collecting or presenting bank.] ►Because the paying bank is unable to identify the depositary bank, the paying bank will not know whether the

depositary bank has agreed to accept an electronic return from the paying bank under § 229.32(a). Moreover, returning the check through the forward collection chain may require handling by more banks, and thus may take more time.◄ Although the lack of a requirement of expeditious return will create risks for the depositary bank, in many cases the inability to identify the depositary bank will be due to the depositary bank's, or a collecting bank's, failure to use the indorsement required by § 229.35(a) and appendix D. If the depositary bank failed to use the proper indorsement, it should bear the risks of less than expeditious return. Similarly, where the inability to identify the depositary bank is due to indorsements or other information placed on the back of the check by the depositary bank's customer or other prior indorser, the depositary bank should bear the risk that it cannot charge a returned check back to that customer. Where the inability to identify the depositary bank is due to subsequent indorsements of collecting banks, these collecting banks may be liable for a loss incurred by the depositary bank due to less than expeditious return of a check; those banks therefore have an incentive to return checks sent to them under this paragraph quickly.

[4.]►f.◄ This paragraph does not relieve a paying bank from the liability for the lack of expeditious return in cases where the paying bank is itself responsible for the inability to identify the depositary bank, such as when the paying bank's customer has used a check with printing or other material on the back in the area reserved for the depositary bank's indorsement, making the indorsement unreadable. (*See* § 229.38(d).)

[5.]►g.◄ A paying bank's return under this paragraph is also subject to its midnight deadline under U.C.C. 4–301, Regulation J (if the check is returned through a Federal Reserve Bank), and the exception provided in § 229.30(c). A paying bank also may send a check to a prior collecting bank to make a claim against that bank under § 229.35(b) where the depositary bank is insolvent or in other cases as provided in § 229.35(b). Finally, a paying bank may make a claim against a prior collecting bank based on a breach of warranty under U.C.C. 4–208.

C. 229.30(c) Extension of Deadline

1. This paragraph permits extension of the deadlines ►in the U.C.C., Regulation J (12 CFR part 210) and § 229.36(d)(3) of this part◄ for returning a check for which the paying bank previously has settled (generally midnight of the banking day following the banking day on which the check is received by the paying bank) and for returning a check without settling for it (generally midnight of the banking day on which the check is received by the paying bank, or such other time provided by § 210.9 of Regulation J (12 CFR part 210) or § 229.36[(f)(2)]►(d)(3)◄ of this part)[, but not of the duty of expeditious return, in two circumstances:]►if the paying bank returns the check using a means of delivery such that the depositary bank would ordinarily receive the return within the timeframe specified in § 229.30(a).◄

►2. If a paying bank sends an electronic return, the paying bank's midnight (or other applicable) deadline is extended to the time it dispatches the electronic return so long as the depositary bank would ordinarily receive the electronic return by 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the paying bank received the check. A paying bank may rely on its returning bank's electronic return delivery schedules in determining when the depositary bank would ordinarily receive an electronic return.◄

[a]►3◄. A paying bank may have a courier that leaves after midnight (or after any other applicable deadline) to deliver its forward-collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check [reaches the receiving bank on or before the receiving bank's next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. or later set by the receiving bank under U.C.C. 4–108]►would ordinarily reach the depositary bank by 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the paying bank received the check. A paying bank may rely on its returning bank's delivery schedules in determining when the depositary bank would ordinarily receive the returned check◄. [The extension also applies if the check reaches the bank to which it is sent later than the time described in the previous sentence if highly expeditious means of transportation are used. For example, a West Coast paying bank may use this further extension to ship a returned check by air courier directly to an East Coast returning bank even if the check arrives after the returning bank's cutoff hour. This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (*see* paragraph C.1.b. below).]

[b. A paying bank may observe a banking day, as defined in the applicable U.C.C., on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the U.C.C. deadline for returning checks received and settled for on Friday, or for returning checks received on Saturday without settling for them, might require the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depositary bank to which the returned checks were sent might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depositary bank by the cut-off hour on its next banking day following the Saturday midnight deadline. This paragraph applies exclusively to the extension of Saturday midnight deadlines.]

[2]►4◄. The time limits that are extended [in each case] are the paying bank's midnight deadline for returning a check for which it has already settled and the paying bank's deadline for returning a check without settling for it in U.C.C. 4–301 and 4–302, §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12), and § 229.36[(f)(2)]►(d)(3)◄ of this part. As these extensions are designed to speed [(§ 229.30(c)(1)), or at least not slow (§ 229.30(c)(2)),] the overall return of checks, no modification or extension of the expeditious return requirements in § 229.30(a) is required.

[3[►5◄. The paying bank satisfies its midnight or other return deadline by dispatching returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the deadline.

[4]►6◄. This paragraph directly affects U.C.C. 4–301 and 4–302 and §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

D. 229.30(d) Identification of Returned Check

1. The reason for the return must be clearly indicated. A check is identified as a returned check if the front of that check indicates the reason for return, even though it does not specifically state that the check is a returned check. [A reason such as "Refer to Maker" is permissible in appropriate cases.] ►"Refer to Maker" is an instruction to the recipient of the returned check and not a reason for return. Therefore, "Refer to Maker" is insufficient as a reason for return. "Refer to Maker" may be used in addition to the reason for return.◄ If the returned check is a substitute check, ►the requirement to place◄ the reason for return ►information such that it is retained on any subsequent substitute check could be met by placing the information (1) in the location on the front of the substitute check that is specified by ANS X9.100–140 or (2)◄ [must be placed] within the image of the original check that appears on the front of the substitute check so that the information is retained on any subsequent substitute check. If the paying bank places the returned check in a carrier envelope, the carrier envelope should indicate that it is a returned check but need not repeat the reason for return stated on the check if it in fact appears on the check.

[F. 229.30(f)]►E. 229.30(e)◄ Notice in Lieu of Return

►1. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in § 229.35(b). Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check (or must retain possession of the check for protest) and does not have sufficient information to create a substitute check. For example, a bank may have an image of both sides of the check, but the image may be insufficient, or may not be in the proper format, to create a substitute check. A bank using a notice in lieu of return gives a warranty under § 229.34(e)(1)(iv) that the [original] check has not been and will not be returned.◄

[1]►2◄. A check that is lost or otherwise unavailable for return may be returned by sending a legible copy of both sides of the

check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in [§ 229.33(b)]►§ 229.30(e)(2)◄. The copy or written notice must clearly indicate it is a notice in lieu of return [and must be handled in the same manner as other returned checks]. ►Notice by a legible facsimile or electronic transmission of the image of both sides of the check may satisfy the requirements for a notice in lieu of return. If no image of both sides of the check is available, the notice may be sent by other means, but not◄ [Notice] by telephone[, telegraph,] or other [electronic] ►oral◄ transmission[,other than a legible facsimile or similar image transmission of both sides of the check, does not satisfy the requirements for a notice in lieu of return]. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that the returning and depositary banks are informed that the notice carries value. [Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check or must retain possession of the check for protest. A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in § 229.35(b). A bank using a notice in lieu of return gives a warranty under § 229.34(a)(4) that the original check has not been and will not be returned.]

[2]►3◄. The requirement of this paragraph supersedes the requirement of U.C.C. 4–301(a) as to the form and information required of a notice of dishonor or nonpayment. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

[3]►4◄. The notice in lieu of return is subject to the provisions of § 229.30 and is treated like a returned check for settlement purposes. [If the original check is over $2,500, the notice of nonpayment under § 229.33 is still required, but may be satisfied by the notice in lieu of return if the notice in lieu meets the time and information requirements of § 229.33.]

[4]►5◄. If not all of the information required by [§ 229.33(b)] ►§ 229.30(e)(2)◄ is available, the paying bank may make a claim against any prior bank handling the check as provided in § 229.35(b).

►6. Content of notices

a. This paragraph provides that the notice must contain, if available, specified items of information that would enable a depositary bank to identify the check to which the notice relates.

b. If the paying bank cannot identify the depositary bank from the check itself, the paying bank should treat the notice in lieu as if it were a returned check for which the paying bank cannot identify the depositary bank (*see* § 229.30(b)(2) and accompanying commentary).

c. If a bank is uncertain as to the accuracy of an item of information, it nevertheless must identify the item of information, but a bank may make this identification by setting the item off with question marks, asterisks, or other symbols designated for this purpose by generally applicable industry standards.◄

[G. 229.30(g)]►F. 229.30(f)◄ Reliance on Routing Number

1. Although § 229.35 and appendix D require that the depositary bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depositary bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depositary bank as it appears on the check (in the depositary bank's indorsement) ►or in the electronic image or information included in the electronic collection item◄ when it is received by the paying bank.

2. If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depositary bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under § 229.38(a).

XVII. Section 229.31 Returning Bank's Responsibility for Return of Checks

A. 229.31(a) Return of Checks

1. The standards for return of checks established by this section are similar to those for paying banks in § 229.30(a). This section requires a returning bank to [return a returned check expeditiously if it agrees to handle the returned check for expeditious return under this paragraph] ►send a returned check expeditiously if the returning bank has agreed to do so◄. In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depositary bank for the purposes of returning the check. ►A returning bank may satisfy its expeditious return requirement by returning either an electronic return or returned check within the timeframe. The exceptions to this requirement are set out in § 229.31(b).◄

2. A returning bank agrees to [handle a returned check for expeditious return]►return checks expeditiously◄ to the depositary bank if it:

a. Publishes or distributes availability schedules for the return of ►electronic returns or◄ returned checks and accepts the ►electronic return or◄ returned check for return;

[b. Handles a returned check for return that it did not handle for forward collection;] or

[c]►b◄. Otherwise agrees to handle a returned check for expeditious return.

►3. A returning bank may agree to handle only certain types of returns expeditiously. For example, a returning bank may agree to handle electronic returns expeditiously, while not agreeing to handle returned checks expeditiously.

4. If a returning bank has not agreed to return checks expeditiously, the returning bank has no expeditious return requirement with respect to the check. Therefore, a paying bank will not satisfy its expeditious return requirement by sending a returned check to that returning bank that has not agreed to return checks expeditiously.

5. The returning bank's return of a check under this paragraph is subject to the midnight deadline under U.C.C. 4–202(b). (*See* definition of returning bank in § 229.2(mm)).

6. In the case of electronic returns, a returning bank agrees to handle the electronic return expeditiously if the returning bank has an agreement with the paying bank for accepting electronic returns, and handling such returns expeditiously, and the returning bank accepts the electronic return.◄

[3]►7◄. [Two-day/four-day test.] As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it [meets either of two tests. Under the "two-day/four-day" test, the check must be returned so that it] ►is sent in a manner such that it◄ would normally be received by the depositary bank by 4 p.m. [either] ►(local time of the depositary bank)◄ two [or four] business days after the check was presented to the paying bank[, depending on whether or not the paying bank is located in the same check processing region as the depositary bank]. [This is the same test as the two-day/four-day test applicable to paying banks. (*See* Commentary to § 229.30(a).)] While a returning bank will not have first hand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each. [In effect, the two-day/four day test protects all paying and returning banks that return checks from claims that they failed to return a check expeditiously, where the check is returned within the specified time following presentment to the paying bank, or a later time as would result from unforeseen delays.]

[4. Forward collection test.

a. The "forward collection" test is similar to the forward collection test for paying banks. Under this test, a returning bank must handle a returned check in the same manner that a similarly situated collecting bank would handle a check of similar size drawn on the depositary bank for forward collection. A similarly situated bank is a bank (other than a Federal Reserve Bank) that is of similar asset size and check handling activity in the same community. A bank has similar check handling activity if it handles a similar volume of checks for forward collection as the forward collection volume of the returning bank.

b. Under the forward collection test, a returning bank must accept returned checks, including both qualified and other returned checks ("raw returns"), at approximately the same times and process them according to the same general schedules as checks handled for forward collection. Thus, a returning bank generally must process even raw returns on an overnight basis, unless its time limit is extended by one day to convert a raw return to a qualified returned check.]

[5]►8◄. Cut-off hours. A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but the cut-off hour for

returned checks may not be earlier than 2 p.m. ►(local time of the returning bank).◄ The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks. [All returned checks received by a cut-off hour for returned checks must be processed and dispatched by the returning bank by the time that it would dispatch forward collection checks received at a corresponding forward collection cut-off hour that provides for the same or faster availability for checks destined for the same depositary banks.]

[6. Examples.

a. If a returning bank receives a returned check by its cut-off hour for returned checks on Monday and the depositary bank and the returning bank are participants in the same clearinghouse, the returning bank should arrange to have the returned check received by the depositary bank by Tuesday. This would be the same day that it would deliver a forward collection check drawn on the depositary bank and received by the returning bank at a corresponding forward collection cut-off hour on Monday.

b. i. If a returning bank receives a returned check, and the returning bank normally would collect a forward collection check drawn on the depositary bank by sending the forward collection check to a correspondent or a Federal Reserve Bank by courier, the returning bank could send the returned check in the same manner if the correspondent has agreed to handle returned checks expeditiously under § 229.31(a). The returning bank would have to deliver the check by the correspondent's or Federal Reserve Bank's cut-off hour for returned checks that corresponds to its cut-off hour for forward collection checks drawn on the depositary bank. A returning bank may take a day to convert a check to a qualified returned check. Where the forward collection checks are delivered by courier, mailing the returned checks would not meet the duty established by this section for returning banks.

ii. A returning bank must return a check to the depositary bank by courier or other means as fast as a courier, if similarly situated returning banks use couriers to deliver their forward collection checks to the depositary bank.

iii. For some depositary banks, no community practice exists as to delivery of checks. For example, a credit union whose customers use payable-through drafts normally does not have checks presented to it because the drafts are normally sent to the payable-through bank for collection. In these circumstances, the community standard is established by taking into account the dollar volume of the checks being sent to the depositary bank and the location of the depositary bank, and determining whether similarly situated banks normally would deliver forward collection checks to the depositary bank, taking into account the particular risks associated with returned checks. Where the community standard does not require courier delivery, other means of delivery, including mail, are acceptable.]

[7]►9◄. Qualified returned checks.

a. The expeditious return requirement for a returning bank in this regulation is more stringent in many cases than the duty of a collecting bank to exercise ordinary care under U.C.C. 4–202 in returning a check. [A returning bank is under a duty to act as expeditiously in returning a check as it would in the forward collection of a check. Notwithstanding its duty of expeditious return, its midnight deadline under U.C.C. 4–202 and § 210.12(a) of Regulation J (12 CFR 210.12(a)), under the forward collection test, a returning bank may take an extra day to qualify a returned check.] A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. [This paragraph gives a returning bank an extra business day beyond the time that would otherwise be required to return the returned check to convert a returned check to a qualified returned check.] The qualified returned check must include the routing number of the depositary bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. A check that is converted to a qualified returned check must be encoded in accordance with ANS X9.13 for original checks or ANS X9.100–140 for substitute checks.

[b. If the returning bank is sending the returned check directly to the depositary bank, this extra day is not available because preparing a qualified returned check will not expedite handling by other banks.] If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under § 229.38 for losses caused by any negligence or under § 229.34(c)(3) for breach of an encoding warranty. [The returning bank would not lose the one-day extension available to it for creating a qualified returned check because of an encoding error.]

[8]►10◄. Routing of returned check.

a. Under § 229.31(a), the returning bank is authorized to route the returned check in a variety of ways:

i. It may send ►an electronic return if the depositary bank has agreed to accept an electronic return from the returning bank or it may send◄ the returned check directly to the depositary bank by courier or other [expeditious] means of delivery; [or]

ii. ►It may send an electronic return to any other returning bank that has agreed to accept an electronic return from the returning bank; or

iii.◄ It may send the returned check to any returning bank agreeing to handle the returned check for expeditious return to the depositary bank under this section regardless of whether or not the returning bank handled the check for forward collection.

b. If the returning bank elects to send the returned check directly to the depositary bank, it is not required to send the check to the branch of the depositary bank that first handled the check. The returned check may be sent to the depositary bank at any location permitted under § 229.32(b). ►If the returning bank elects to send the electronic return directly to the depositary bank, it must send the electronic return to the electronic return point designated by the depositary bank◄.

[9]►11◄. Responsibilities of returning bank. In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depositary bank. (*See* U.C.C. 4–202(c) regarding the responsibility of collecting banks.) For example, if the paying bank has delayed the start of the return process, but the returning bank acts in a timely manner, the returning bank may satisfy the requirements of this section even if the delayed return results in a loss to the depositary bank. (*See* § 229.38.) A returning bank must handle a notice in lieu of return [as] expeditiously [as a returned check].

[10]►12◄. U.C.C. sections affected. This paragraph directly affects the following provisions of the U.C.C., and may affect other sections or provisions:

a. Section 4–202(b), in that time limits required by that section may be affected by the additional requirement to make an expeditious return.

b. Section 4–214(a), in that settlement for returned checks is made under § 229.31(c) and not by charge-back of provisional credit, and in that the time limits may be affected by the additional requirement to make an expeditious return.

B. 229.31(b) [Unidentifiable Depositary Bank]►Exceptions to Expeditious Return of Checks◄

1. This section is similar to § 229.30(b), but applies to returning banks instead of paying banks. [In some cases a returning bank will be unable to identify the depositary bank with respect to a check.] ►In general, in circumstances where the paying bank is not subject to the expeditious return requirement (see § 229.30(b)), the returning bank may not receive the returned check in a timeframe that enables it to return the check to the depositary bank by the second business day following the banking day on which the check was presented to the paying bank. Moreover, the same circumstances that make expeditious return of a check difficult for a paying bank also are likely to make expeditious return of a check difficult for a returning bank.◄

►2. Depositary bank has not agreed to accept electronic returns under § 229.32(a).

a. A returning bank is not subject to the expeditious return requirement in § 229.31(a) with respect to a check if the depositary bank has not agreed to accept an electronic return from the paying bank under § 229.32(a), in which case the paying bank is not required to return the check expeditiously under § 229.30(a). If a depositary bank has not agreed to accept electronic returns, a returning bank is unlikely to be able to return a paper check to the depositary bank in an expeditious manner.

3. Unidentifiable depositary banks

a.◄ Returning banks agreeing to handle checks for return to depositary banks under § 229.31(a) are expected to be expert in identifying depositary bank indorsements. In the limited cases where the returning bank cannot identify the depositary bank, ►if◄ the returning bank ►did not handle the check for forward collection, it◄ may send the returned check to [a returning bank that agrees to handle the returned check for

expeditious return under § 229.31(a), or it may send the returned check to a]►any collecting◄ bank that handled the returned check for forward collection►.◄ [, even if that bank does not agree to handle the check expeditiously under section 229.31(a).

2.] If►, on the other hand,◄ the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward-collection process, which will be better able to identify the depositary bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depositary bank.

►b.◄ As in the case of paying banks under § 229.30(b), a returning bank[’s sending of a check to a bank that handled the check for forward collection under § 229.31(b)] ►that cannot identify the depositary bank◄ is not subject to the expeditious return requirements of § 229.31(a).

[3. The returning bank’s return of a check under this paragraph is subject to the midnight deadline under U.C.C. 4–202(b). (*See* definition of returning bank in § 229.2(cc).)]

[4. Where a returning bank receives a check that it does not agree to handle expeditiously under § 229.31(a), such as a check sent to it under § 229.30(b), but the returning bank is able to identify the depositary bank, the returning bank must thereafter return the check expeditiously to the depositary bank. The returning bank returns a check expeditiously under this paragraph if it returns the check by the same means it would use to return a check drawn on it to the depositary bank or by other reasonably prompt means].

[5]►c◄. As in the case of a paying bank returning a check under § 229.30(b)), a returning bank returning a check under [this paragraph]►§ 229.30(b)(2)◄ to a bank that has not agreed to handle the check expeditiously must advise that bank that it is unable to identify the depositary bank. This advice must be conspicuous, such as a stamp on [each check for which the depositary bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one] ►the check or a◄ notice on the cash letter. [The returned check may not be prepared for automated return.] ►In the case of an electronic return, the advice requirement may be satisfied by the returning bank inserting the routing number of the bank to which it is sending the return where the returning bank otherwise would have inserted the routing number of the depositary bank.◄

►3. Depositary banks without accounts

a. Section 229.31(b)(3) is similar to § 229.30(b)(3) and relieves the returning bank of its obligation to make expeditious return to a depositary bank that does not maintain any accounts. (*See* the commentary to § 229.30(b).◄

C. 229.31(c) Settlement

1. Under the U.C.C., a collecting bank receives settlement for a check [when it]►by midnight of the banking day on which the check◄ is presented to the paying bank. The paying bank may recover the settlement when the paying bank returns the check to the presenting bank. Under this regulation, however, the paying bank may return the check directly to the depositary bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the settlement made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection.

2. Any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward collection checks. These settlements by returning banks, as well as settlements between banks made during the forward collection of a check, are considered final when made subject to any deferment of availability. (*See* [§ 229.36(d)]►§ 229.36(c)◄ and Commentary to § 229.35(b).)

3. A returning bank may vary the settlement method it uses by agreement with paying banks or other returning banks. Special rules apply in the case of insolvency of banks. (*See* § 229.39.) If payment cannot be obtained from a depositary or returning bank because of its insolvency or otherwise, recovery can be had by returning, paying, and collecting banks from prior banks on this basis of the liability of prior banks under § 229.35(b).

4. This paragraph affects U.C.C. 4–214(a) in that a paying or collecting bank does not ordinarily have a right to charge back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions. Under [§ 229.36(d)]►§ 229.36(c)◄, a bank collecting a check remains liable to prior collecting banks and the depositary bank’s customer under the U.C.C.

D. 229.31(d) Charges

1. This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank or other returning bank for its service in handling a returned check. Where a claim is made under § 229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.

[F. 229.31(f)]►E. 229.31(e)◄ Notice in Lieu of Return

1. This paragraph is similar to [§ 229.30(f)] ►§ 229.30(e)◄ and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check ►(◄or must retain possession of the check for protest►) and does not have sufficient information to create a substitute check◄. [A check is not unavailable for return if it is merely difficult to retrieve from a filing system or from storage by a keeper of checks in a truncation system.] (*See* the Commentary to [§ 229.30(f)]►§ 229.30(e)◄.)

[G. 229.31(g)] ►F. 229.31(f)◄ Reliance on Routing Number

1. This paragraph is similar to [§ 229.30(g)]►§ 229.30(f)◄ and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depositary bank’s indorsement►,◄ [or] on qualified returned checks►, or in the electronic image or information included in the electronic return when it is received by the returning bank◄. (*See* the Commentary to [§ 229.30(g)]►§ 229.30(f)◄.)

XVIII. Section 229.32 Depositary Bank’s Responsibility for Returned Checks

►*A. 229.32(a) Acceptance of Electronic Returns*

1. A paying bank and a returning bank must satisfy the expeditious return requirements under §§ 229.30(a) and 229.31(a) only if the depositary bank has agreed to accept an electronic return from the paying bank. This section sets forth the circumstances under which a depositary bank has agreed to accept an electronic return from the paying bank for purposes of subpart C, and therefore the circumstances under which the paying bank and returning banks have a duty to return the check expeditiously.

2. There are three different ways a depositary bank can agree to accept electronic returns from the paying bank for purposes of subpart C:

a. First, a depositary bank may have a direct contractual relationship with the paying bank under which it has agreed to accept electronic returns directly from the paying bank.

b. Second, a depositary bank may have a direct contractual relationship with a returning bank under which the depositary bank accepts electronic returns directly from the returning bank. In turn, that returning bank must hold itself out as willing to accept electronic returns directly or indirectly from the paying bank and agrees to return checks expeditiously. For example, the returning bank may hold itself out as willing to enter into a direct contractual relationship with the paying bank to accept electronic returns or returned checks for expeditious return to the depositary bank. Alternatively, that returning bank may hold itself out as willing to accept electronic returns from other returning banks that accept electronic returns from the paying bank. A depositary bank is deemed to have agreed to accept electronic returns under § 229.32(a)(1)(ii) if the returning bank holds itself out as willing to accept electronic returns directly or indirectly from the paying bank, notwithstanding the fact that the paying bank has no actual agreement with the returning bank to send electronic returns.

c. Third, a depositary bank may have otherwise agreed with the paying bank to accept electronic returns. For example, the

depositary bank and paying bank may both be members of the same clearing house, under the rules of which the depositary bank has agreed to accept electronic returns from the paying bank.

d. The paying bank or returning bank must deliver the electronic return to the electronic location designated by the depositary bank. Accordingly, regardless of the means by which a depositary bank agrees to accept electronic returns from the paying bank, the depositary bank's agreement with the paying bank or returning bank must designate an electronic return point.

3. A returning bank holds itself out as willing to accept electronic returns from a paying bank by publishing information about its generally available electronic return service, including how to enroll in the returning bank's electronic return service and fees for the service. For example, a returning bank may publish on its Web site electronic return service set-up guides for a paying bank to complete.

4. This section also sets forth when a depositary bank receives an electronic return. A depositary bank "receives" an electronic return when that electronic return is delivered to the electronic return point designated by the bank or when the electronic return is otherwise made available for retrieval or review in accordance with an agreement between the depositary bank and the delivering paying bank or returning bank. For example, if a depositary bank designates an e-mail address as its electronic return point, the depositary bank has received the electronic return when it is delivered to that e-mail address. In contrast, if the depositary bank has an arrangement with a returning bank whereby the returning bank sends the electronic return to its storage device and then provides the depositary bank with access to the storage device for retrieving electronic returns, the electronic return is received by the depositary bank when the returning bank makes the electronic return available for the depositary bank to retrieve or review from the storage device in accordance with the agreement between the returning bank and the depositary bank.◀

[A. 229.32(a)]►B. 229.32(b)◀ Acceptance of ►Paper◀ Returned Checks

1. [This regulation seeks to encourage direct returns by paying and returning banks and may result in a number of banks sending checks to depositary banks with no preexisting arrangements as to where the returned checks should be delivered.] This paragraph states where the depositary bank is required to accept returned ►paper◀ checks [and written notices of nonpayment under § 229.33]. (These locations differ from locations at which a depositary bank ►may accept electronic returns◀[or must accept electronic notices].) It is derived from U.C.C. 3–111, which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depositary bank does not print the check and can only specify the place of "payment" of the returned check in its indorsement.

2. The paragraph specifies four locations at which the depositary bank must accept returned ►paper◀ checks:

a. The depositary bank must accept returned ►paper◀ checks at any location at which it requests presentment of forward collection checks►,◀ such as a processing center. A depositary bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.

b. i. If the depositary bank indorsement states the name and address of the depositary bank, it must accept returned ►paper◀ checks at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depositary bank must accept returned checks at any branch or head office consistent with the address. If, for example, the address is "New York, New York," each branch in New York City must accept returned ►paper◀ checks. ►Accordingly, a depositary bank may limit the locations at which it must accept returned paper checks by specifying a branch or head office in its indorsement.◀

ii. If no address appears in the depositary bank's indorsement, the depositary bank must accept returned ►paper◀ checks at any branch or head office associated with the depositary bank's routing number. The offices associated with the routing number of a bank are found in *American Bankers Association Key to Routing Numbers,* published by an agent of the American Bankers Association, which lists a city and state address for each routing number.

[iii. The depositary bank must accept returned checks at the address in its indorsement and at an address associated with its routing number in the indorsement if the written address in the indorsement and the address associated with the routing number in the indorsement are not in the same check processing region. Under §§ 229.30(g) and 229.31(g), a paying or returning bank may rely on the depositary bank's routing number in its indorsement in handling returned checks and is not required to send returned checks to an address in the depositary bank's indorsement that is not in the same check processing region as the address associated with the routing number in the indorsement.]

[iv]►iii◀. If no routing number or address appears in its indorsement, the depositary bank must accept a returned ►paper◀ check at any branch or head office of the bank. The indorsement requirement of § 229.35 and appendix D requires that the indorsement contain a routing number, a name, and a location. Consequently, this provision, as well as paragraph (a)(2)(ii) of this section, only applies where the depositary bank has failed to comply with the indorsement requirement.

3. For ease of processing, a depositary bank may require that returning ►banks◀ or paying banks returning checks to it separate returned checks from forward collection checks being presented.

4. Under [§ 229.33(d)]►§ 229.32(f)◀, a depositary bank receiving a returned check [or notice of nonpayment] must send notice to its customer by its midnight deadline or within a longer reasonable time.

[B. 229.32(b)]►C. 229.32(c)◀ Payment

1. As discussed in the commentary to § 229.31(c), under this regulation a paying ►bank◀ or returning bank does not obtain credit for a returned check by charge-back but by, in effect, [presenting] ►"presenting"◀ the returned check to the depositary bank. This paragraph imposes an obligation to "pay" a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depositary bank may not return a returned check for which it is the depositary bank. Also, certain means of payment, such as remittance drafts, may be used only with the agreement of the [returning] bank ►"presenting" the returned check◀.

2. The depositary bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to U.C.C. 4–108, which permits the bank to establish a cut-off hour, generally not earlier than 2 p.m., and treat checks received after that hour as being received on the next banking day. If the depositary bank is unable to make payment to a returning ►bank◀ or paying bank on the banking day that it receives the returned check, because the returning ►bank◀ or paying bank is closed for a holiday or because the time when the depositary bank received the check is after the close of Fedwire, *e.g.,* west coast banks with late cut-off hours, payment may be made on the next banking day of the bank receiving payment.

3. Payment must be made so that the funds are available for use by the bank returning the check to the depositary bank on the day the check is received by the depositary bank. For example, a depositary bank meets this requirement if it sends a wire transfer of funds to the returning ►bank◀ or paying bank on the day it receives the returned check, even if the returning ►bank◀ or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.

4. The depositary bank may use a net settlement arrangement to settle for a returned check. Banks with net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement could be established.

5. The bank sending the returned check to the depositary bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning ►bank◀ or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

6. This paragraph and this subpart do not affect the depositary bank's right to recover

a provisional settlement with its nonbank customer for a check that is returned. (*See* also §§ 229.19(c)(2)(ii), [229.33(d)]►229.32(f)◄ and 229.35(b).)

[C. 229.32(c)[►D. 229.32(d)◄ Misrouted Returned Checks

1. This paragraph permits a bank receiving a check on the basis that it is the depositary bank to send the misrouted returned check to the correct depositary bank, if it can identify the correct depositary bank, either directly or through a returning bank agreeing to handle the check expeditiously under [§ 229.30(a)]►§ 229.31(a)◄. In these cases, the bank receiving the check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check must send the check back to the bank from which it was received. In either case the bank to which the returned check was misrouted could receive settlement for the check. The depositary bank would be required to pay for the returned check under [§ 229.32(b)]►§ 229.32(c)◄, and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under § 229.31(c). If the check was originally received "free," that is, without a charge for the check, the bank incorrectly receiving the check would have to return the check, without a charge, to the bank from which it came. The bank to which the returned check was misrouted is required to act promptly but is not required to meet the expeditious return requirements of § 229.31(a); however, it must act within its midnight deadline. This paragraph does not affect a bank's duties under § 229.35(b).

[D. 229.32(d)]►E. 229.32(e)◄ Charges

1. This paragraph prohibits a depositary bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank also is the depositary bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depositary bank, however, no fee may be charged.

►F. 229.32(f) Notification to Customer

1. This paragraph requires a depositary bank to notify its customer of nonpayment upon receipt of a returned check. Notice also must be given if a depositary bank receives a notice of recovery under § 229.35(b). A bank that chooses to provide the notice required by § 229.32(f) in writing may send the notice by e-mail or facsimile if the bank sends the notice to the e-mail address or facsimile number specified by the customer for that purpose. The notice to the customer required under this paragraph also may satisfy the notice requirement of § 229.13(g) if the depositary bank invokes the reasonable-cause exception of § 229.13(e) due to learning of nonpayment, provided the notice meets all the requirements of § 229.13(g).◄

►*XIX. Section 229.33 Electronic returns and collection items*

A. 229.33(a) Checks under this subpart

1. If a depositary bank has agreed to accept an electronic return, that electronic return is subject to the provisions of this subpart as if it were a returned check. For example, a depositary bank that receives an electronic return must notify its customer by midnight of the banking day following the banking day on which it received the electronic return, or within a longer reasonable time. (*See* § 229.32(f)).

2. Similarly, if a bank has agreed to accept an electronic collection item from another bank (either under the same-day settlement provisions of § 229.36(d) or otherwise), the electronic collection item is subject to the provisions of this subpart as it were a check. For example, if a paying bank receives presentment of an electronic collection item, it is subject to the expeditious return requirements of this subpart, provided the depositary bank has agreed to accept electronic returns from the paying bank under § 229.32(a).◄

XX. Section 229.34 Warranties

►A. Transfer and presentment warranties with respect to an electronic collection item and electronic return.

1. Paragraph (a) sets forth the warranties that a bank makes when transferring an electronic collection item or electronic return and receives settlement or other consideration for it. Electronic collection items and electronic returns are treated as checks subject to the provisions of subpart C, and therefore the warranties in § 229.34(a) are in addition to any warranties a bank makes under paragraphs (b), (c), or (d).

2. The first warranty in § 229.34(a) relates to the requirements for substitute checks. A bank that transfers an electronic collection item or electronic return warrants that the electronic image accurately represents all of the information on the front and back of the original check as of the time the original check was truncated and that the electronic information contains a record of all MICR-line information required for a substitute check under § 229.2(rr) of this part and the amount of the check. This paragraph provides a bank that creates a substitute check from an electronic collection item or electronic return with a warranty claim against the bank that transferred the electronic collection item or electronic return to it or any prior transferor of the electronic collection item or electronic return.

3. A bank that transfers an electronic collection item or an electronic return also warrants that no person will receive a transfer, return of, or otherwise be charged for, an electronic collection item, an electronic return, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid. A bank that transfers an electronic collection item or electronic return that is an electronic representation of a substitute check also makes the warranties and indemnity in §§ 229.52 and 229.53.◄

[C. 229.34(c)]►B. 229.34(b)◄ Warranty of Settlement Amount, Encoding, and Offset

1. Paragraph [(c)]►(b)◄(1) provides that a bank that presents and receives settlement for checks warrants to the paying bank that the settlement it demands (e.g., as noted on the cash letter) equals the total amount of the checks it presents. This paragraph gives the paying bank a warranty claim against the presenting bank for the amount of any excess settlement made on the basis of the amount demanded, plus expenses. If the amount demanded is understated, a paying bank discharges its settlement obligation under U.C.C. 4–301 by paying the amount demanded, but remains liable for the amount by which the demand is understated; the presenting bank is nevertheless liable for expenses in resolving the adjustment.

2. When checks or returned checks are transferred to a collecting ►bank◄, returning ►bank◄, or depositary bank, the transferor bank is not required to demand settlement, as is required upon presentment to the paying bank. However, often the checks or returned checks will be accompanied by information (such as a cash letter listing) that will indicate the total of the checks or returned checks. Paragraph [(c)]►(b)◄(2) provides that if the transferor bank includes information indicating the total amount of checks or returned checks transferred, it warrants that the information is correct (*i.e.,* equals the actual total of the items).

3. Paragraph [(c)]►(b)◄(3) provides that a bank that presents or transfers a check or returned check warrants the accuracy of [the magnetic ink encoding that was placed on the item] ►information encoded on the item in magnetic ink or provided electronically◄ after issue, and that exists at the time of presentment or transfer, to any bank that subsequently handles the check or returned check. Under U.C.C. 4–209(a), only the encoder (or the encoder and the depositary bank, if the encoder is a customer of the depositary bank) warrants the encoding accuracy, thus any claims on the warranty must be directed to the encoder. Paragraph [(c)]►(b)◄(3) expands on the U.C.C. by providing that all banks that transfer or present a check or returned check make the encoding warranty. In addition, under the U.C.C., the encoder makes the warranty to subsequent collecting banks and the paying bank, while paragraph [(c)]►(b)◄(3) provides that the warranty is made to banks in the return chain as well. Paragraph [(c)]►(b)◄(3) applies to all MICR-line encoding on a substitute check ►and, in the case of an electronic collection item or electronic return, to the electronic information related to a check◄.

4. A paying bank that settles for an overstated cash letter because of a misencoded check may make a warranty claim against the presenting bank under paragraph [(c)]►(b)◄(1) (which would require the paying bank to show that the check was part of the overstated cash letter) or an encoding warranty claim under paragraph [(c)]►(b)◄(3) against the presenting bank or any preceding bank that handled the misencoded check.

5. Paragraph [(c)]►(b)◄(4) provides that a paying bank or a depositary bank may set

off excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depositary bank) subsequent to the excess settlement.

[D. 229.34(d)]►C. 229.34(c)◄ Transfer and Presentment Warranties ►With Respect to a Remotely Created Check◄

1. A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants that the person on whose account the check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The warranties are given only by banks and only to subsequent banks in the collection chain. The warranties ultimately shift liability for the loss created by an unauthorized remotely created check to the depositary bank. The depositary bank cannot assert the transfer and presentment warranties against a depositor. However, a depositary bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person.

2. The transfer and presentment warranties for remotely created checks supplement the Federal Trade Commission's Telemarketing Sales Rule, which requires telemarketers that submit checks for payment to obtain the customer's "express verifiable authorization" (the authorization may be either in writing or tape recorded and must be made available upon request to the customer's bank). 16 CFR 310.3(a)(3). The transfer and presentment warranties shift liability to the depositary bank only when the remotely created check is unauthorized, and would not apply when the customer initially authorizes a check but then experiences "buyer's remorse" and subsequently tries to revoke the authorization by asserting a claim against the paying bank under U.C.C. 4–401. If the depositary bank suspects "buyer's remorse," it may obtain from its customer the express verifiable authorization of the check by the paying bank's customer, required under the Federal Trade Commission's Telemarketing Sales Rule, and use that authorization as a defense to the warranty claim.

3. The scope of the transfer and presentment warranties for remotely created checks differs from that of the corresponding U.C.C. warranty provisions in two respects. The U.C.C. warranties differ from the [§ 229.34(d)]►§ 229.34(c)◄ warranties in that [they]►the U.C.C. warranties◄ are given by any person, including a nonbank depositor, that transfers a remotely created check and not just to a bank, as is the case under [§ 229.34(d)]►§ 229.34(c)◄. In addition, the U.C.C. warranties state that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. The [§ 229.34(d)]►§ 229.34(c)◄ warranties specifically cover the amount as well as the payee stated on the check. Neither the U.C.C. warranties[,] nor the [§ 229.34(d)]►§ 229.34(c)◄ warranties apply to the date stated on the remotely created check.

4. A bank making the [§ 229.34(d)]►§ 229.34(c)◄ warranties may defend a claim asserting violation of the warranties by proving that the customer of the paying bank is precluded by U.C.C. 4–406 from making a claim against the paying bank. This may be the case, for example, if the customer failed to discover the unauthorized remotely created check in a timely manner.

5. The transfer and presentment warranties for a remotely created check apply to a remotely created check that has been reconverted to a substitute check►, to an electronic collection item derived from a remotely created check, and to an electronic image and information transferred as an electronic collection item derived from a remotely created check.◄

[A. 229.34(a)]►D. 229.34(d)◄ Warranty of Returned Check

1. This paragraph includes warranties that a returned check, including a notice in lieu of return ►and electronic return◄, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the U.C.C. (subject to any claims or defenses under the U.C.C., such as breach of a presentment warranty)[, Regulation J (12 CFR part 210),] or § 229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the [original] check has not been and will not be returned for payment. (See the Commentary to [§ 229.30(f)] ►§ 229.30(e)◄.) ►"Check" includes the original check, a substitute check, an electronic return, and notice in lieu of return.◄ The warranty does not include a warranty that the bank complied with the expeditious return requirements of §§ 229.30(a) and 229.31(a). These warranties do not apply to checks drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (*See* § 229.42.)

►E. 229.34(e) Electronic image and information transferred as an electronic collection item or electronic return

1. Paragraph (e) sets forth the warranties that a bank makes when transferring an electronic image and related information as if it were an electronic collection item or electronic return. These warranties are the same warranties made for electronic collection items and electronic returns throughout § 229.34 and carry the same conditions, such as the requirement for receiving settlement or other consideration where applicable. Applying the § 229.34 warranties to all images and related information transferred as if they were electronic collection items or electronic returns protects a transferee bank in the event it creates a substitute check from an electronic image and related information that does not represent an item that existed in paper (i.e., an electronically created item).

2. As a practical matter, a bank receiving an electronically created image and related information generally cannot distinguish the image and related information from an image and related information that derived from a paper check. In turn, the bank receiving the electronically created image and related information may produce a paper item that is indistinguishable from a substitute check (although the item is not a substitute check because the item never existed in paper). Therefore, a bank that transfers the paper item may be liable for a breach of the substitute check warranties. The warranties in § 229.34(e) enable a bank that receives a nonconforming substitute check to pass back liability to the bank from which it received the electronic image and related information, notwithstanding the fact that the image and information did not derive from a paper check.◄

[B. 229.34(b) Warranty of Notice of Nonpayment

1. This paragraph provides for warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under § 229.33. The requirements of § 229.33 that are not covered by the warranty are subject to the liability provisions of § 229.38. These warranties are designed to give the depositary bank more confidence in relying on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of nonpayment and then subsequently returns the check. (*See* Commentary on § 229.33(a).)]

[E. 229.34(d)]►F. 229.34(f)◄ Damages

1. This paragraph adopts for the warranties in § 229.34 (a), (b), [and] (c)►, (d) and (e)◄ the damages provided in U.C.C. 4–207(c) and 4A–506(b). (*See* definition of interest compensation in [§ 229.2(oo)]►§ 229.2(bb)◄.)

[F. 229.34(e)]►G. 229.34(g)◄ Tender of Defense

1. This paragraph adopts for this regulation the vouching-in provisions of U.C.C. 3–119.

[G. 229.34(f)]►H. 229.34(h)◄ Notice of Claim

1. This paragraph adopts the notice provisions of U.C.C. sections 4–207(d) and 4–208(e). The time limit set forth in this paragraph applies to notices of claims for warranty breaches only. As provided in § 229.38(g), all actions under this section must be brought within one year after the date of the occurrence of the violation involved.

XXI. Section 229.35 Indorsements

A. 229.35(a) Indorsement Standards

1. This section and appendix D require banks to use a standard form of indorsement when indorsing checks during the forward collection and return process. The standard provides for indorsements by all collecting and returning banks, plus a unique standard for depositary bank indorsements. It is designed to facilitate the identification of the depositary bank and the prompt return of checks. The regulation places a duty on banks to ensure that their indorsements can be interpreted by any person. The indorsement standard specifies the information each indorsement must contain and its location and ink color►, if applied to a paper check◄.

2. Banks generally apply indorsements to a paper check in one of two ways: (1) Banks

print or "spray" indorsements onto a check when the check is processed through the banks' automated check sorters (regardless of whether the checks are original checks or substitute checks), and (2) reconverting banks print or "overlay" previously applied electronic indorsements and their own indorsements and identifications onto a substitute check at the time that the substitute check is created. If a subsequent substitute check is created in the course of collection or return, that substitute check will contain, in its image of the back of the previous substitute check, reproductions of indorsements that were sprayed or overlaid onto the previous item. For purposes of the indorsement standard set forth in appendix D, a reproduction of a previously applied sprayed or overlaid indorsement contained within an image of a check does not constitute "an indorsement that previously was applied electronically." To accommodate these two indorsement scenarios, the appendix includes two indorsement location specifications: one standard applies to banks spraying indorsements onto existing paper original checks and substitute checks, and another applies to reconverting banks overlaying indorsements that previously were applied electronically and their own indorsements onto substitute checks at the time the substitute checks are created.

3. A bank might use check processing equipment that captures an image of a check prior to spraying an indorsement onto that ►check◄ [item]. If the bank truncates that ►check◄ [item], it should ensure that it also applies an indorsement to the item electronically ►in accordance with ANS X9.100–187, unless the parties otherwise agree◄. A reconverting bank satisfies its obligation to preserve all previously applied indorsements by overlaying a bank's indorsement that previously was applied electronically onto a substitute check that the reconverting bank creates.

4. The location of an indorsement applied to an original paper check in accordance with appendix D may shift if that check is truncated and later reconverted to a substitute check. If an indorsement applied to the original check in accordance with appendix D is overwritten by a subsequent indorsement applied to the substitute check in accordance with appendix D, then one or both of those indorsements could be rendered illegible. As explained in § 229.38(d) and the commentary thereto, a reconverting bank is liable for losses associated with indorsements that are rendered illegible as a result of check substitution.

5. To ensure that indorsements can be easily read and would remain legible after an image of a check is captured, the standard requires all indorsements applied to original checks and substitute checks to be printed in black ink [as of January 1, 2006].

6. The standard requires the depositary bank's indorsement to include (1) its nine-digit routing number set off by an arrow at each end of the routing number and, if the depositary bank is a reconverting bank with respect to the check, an asterisk outside the arrow at each end of the routing number to identify the bank as a reconverting bank; (2) the indorsement date; and (3) if the indorsement is applied physically, name or location information. The standard also permits but does not require the indorsement to include other identifying information. The standard requires a collecting bank's or returning bank's indorsement to include only (1) the bank's nine digit routing number (without arrows) and, if the collecting bank or returning bank is a reconverting bank with respect to the check, an asterisk at each end of the number to identify the bank as a reconverting bank, (2) the indorsement date, and (3) an optional trace or sequence number. ►The information required to be included in the depositary bank's indorsement of an electronic collection item, and the information that may be included, is the same as set forth above. The formatting of the information, however, should be in accordance with ANS X9.100–187.◄

7. Depositary banks should not include information that can be confused with required information. For example, a nine-digit zip code could be confused with the nine-digit routing number.

8. A depositary bank may want to include an address in its indorsement in order to limit the number of locations at which it must receive returned checks. [In instances where this address is not consistent with the routing number in the indorsement, the depositary bank is required to receive returned checks at a branch or head office consistent with the routing number.] Banks should note, however, that § 229.32 requires a depositary bank to receive returned checks at the location(s) at which it receives forward-collection checks[.] ►as well as the other locations enumerated in § 229.32(b) (see § 229.32(b) and accompanying commentary). If a depositary bank includes an e-mail address or other electronic address for delivery of electronic returns, and has agreed to accept electronic returns from the paying bank or returning bank, the paying bank or returning bank may send electronic returns to such address.◄

9. In addition to indorsing a substitute check in accordance with appendix D, a reconverting bank must identify itself and the truncating bank by applying its routing number and the routing number of the truncating bank to the front of the check in accordance with appendix D and ANS X9.100–140. Further, if the reconverting bank is the paying bank, ►or a bank that rejected a check submitted for deposit,◄ it also must identify itself by applying its routing number to the back of the check in accordance with appendix D. In these instances, the reconverting bank and truncating bank routing numbers are for identification purposes only and are not indorsements or acceptances.

10. Under the U.C.C., a specific guarantee of prior indorsement is not necessary. (*See* U.C.C. 4–207(a) and 4–208(a).) Use of guarantee language in indorsements, such as "P.E.G." ("prior endorsements guaranteed"), may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this language may make it more difficult for other banks to identify the depositary bank. Subsequent collecting bank indorsements may not include this language.

11. If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns [and notices of nonpayment] for the bank of account, the indorsement placed on the check as the depositary bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of this section.

12. The backs of [many]►some◄ checks bear pre-printed information or blacked out areas for various reasons. For example, some checks are printed with a carbon band across the back that allows the transfer of information from the check to a ledger with one writing. Also, contracts or loan agreements are printed on certain checks. Other checks that are mailed to recipients may contain areas on the back that are blacked out so that they may not be read through the mailer. On the deposit side, the payee of the check may place its indorsement or information identifying the drawer of the check in the area specified for the depositary bank indorsement, thus making the depositary bank indorsement unreadable.

13. The indorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require banks to avoid placing their indorsements in these areas. Nevertheless, checks will be handled more efficiently if depositary banks design indorsement stamps so that the nine-digit routing number avoids the carbon band area. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the identifiability and legibility of the depositary bank indorsement by staying clear of the area reserved for the depositary bank indorsement.

14. Section 229.38(d) allocates responsibility for loss resulting from a delay in return of a check due to indorsements that are unreadable because of material on the back of the check. The depositary bank is responsible for a loss resulting from a delay in return caused by the condition of the check arising after its issuance until its acceptance by the depositary bank that made the depositary bank's indorsement illegible. The paying bank is responsible for loss resulting from a delay in return caused by indorsements that are not readable because of other material on the back of the check at the time that it was issued. Depositary and paying banks may shift these risks to their customers by agreement.

15. The standard does not require the paying bank to indorse the check; however, if a paying bank does indorse a check that is returned, it should follow the indorsement standard for collecting banks and returning banks. The standard requires collecting and returning banks to indorse the check for tracing purposes. With respect to the identification of a paying bank that is also a reconverting bank, see the commentary to § 229.51(b)(2).

B. 229.35(b) Liability of Bank Handling Check

1. When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depositary bank through any subsequent collecting banks to the paying bank. This section extends the indorsement chain through the paying bank to the returning banks, and would permit each bank to recover from any prior indorser if the claimant bank does not receive payment for the check from a subsequent bank in the collection or return chain. For example, if a returning bank returned a check to an insolvent depositary bank, and did not receive the full amount of the check from the failed bank, the returning bank could obtain the unrecovered amount of the check from any bank prior to it in the collection and return chain including the paying bank. Because each bank in the collection and return chain could recover from a prior bank, any loss would fall on the first collecting bank that received the check from the depositary bank. To avoid circuity of actions, the returning bank could recover directly from the first collecting bank. Under the U.C.C., the first collecting bank might ultimately recover from the depositary bank's customer or from the other parties on the check.

2. Where a check is returned through the same banks used for the forward collection of the check, priority during the forward collection process controls over priority in the return process for the purpose of determining prior and subsequent banks under this regulation.

3. Where a returning bank is insolvent and fails to pay the paying bank or a prior returning bank for a returned check, § 229.39(a) requires the receiver of the failed bank to return the check to the bank that transferred the check to the failed bank. That bank then either could continue the return to the depositary bank or recover based on this paragraph. Where the paying bank is insolvent, and fails to pay the collecting bank, the collecting bank also could recover from a prior collecting bank under this paragraph, and the bank from which it recovered could in turn recover from its prior collecting bank until the loss settled on the depositary bank (which could recover from its customer).

4. A bank is not required to make a claim against an insolvent bank before exercising its right to recovery under this paragraph. Recovery may be made by charge-back or by other means. This right of recovery also is permitted even where nonpayment of the check is the result of the claiming bank's negligence such as failure to make expeditious return, but the claiming bank remains liable for its negligence under § 229.38.

5. This liability is imposed on a bank handling a check for collection or return regardless of whether the bank's indorsement appears on the check. Notice must be sent under this paragraph to a prior bank from which recovery is sought reasonably promptly after a bank learns that it did not receive payment from another bank, and learns the identity of the prior bank. Written notice reasonably identifying the check and the basis for recovery is sufficient if the check is not available. Receipt of notice by the bank against which the claim is made is not a precondition to recovery by charge-back or other means; however, a bank may be liable for negligence for failure to provide timely notice. A paying or returning bank also may recover from a prior collecting bank as provided in §§ 229.30(b) and 229.31(b) ►(in those cases where the paying bank or returning bank is unable to identify the depositary bank)◄. This provision is not a substitute for a paying or returning bank making expeditious return under §§ 229.30(a) or 229.31[(b)]►(a)◄. This paragraph does not affect a paying bank's accountability for a check under U.C.C. 4–215(a) and 4–302. Nor does this paragraph affect a collecting bank's accountability under U.C.C. 4–213 and 4–215(d). A collecting bank becomes accountable upon receipt of final settlement as provided in the foregoing U.C.C. sections. The term final settlement in §§ 229.31(c), [229.32 (b)]►229.32(c)◄, and [229.36 (d)]►229.36(c)◄is intended to be consistent with the use of the term final settlement in the U.C.C. (e.g., U.C.C. 4–213, 4–214, and 4–215). (*See* also § 229.2[(oo)]►(bb)◄ and Commentary.)

6. This paragraph also provides that a bank may have the rights of a holder based on the handling of the check for collection or return. A bank may become a holder or a holder in due course regardless of whether prior banks have complied with the indorsement standard in § 229.35(a) and appendix D.

7. This paragraph affects the following provisions of the U.C.C., and may affect other provisions:

a. Section 4–214(a), in that the right to recovery is not based on provisional settlement, and recovery may be had from any prior bank. Section 4–214(a) would continue to permit a depositary bank to recover a provisional settlement from its customer. (*See* [§ 229.33(d)]►§ 229.32(f)◄.)

b. Section 3–415 and related provisions (such as section 3–503), in that such provisions would not apply as between banks, or as between the depositary bank and its customer.

C. 229.35(c) Indorsement by Bank

1. This section protects the rights of a customer depositing a check in a bank without requiring the words "pay any bank," as required by the U.C.C. (*See* U.C.C. 4–201(b).) Use of this language in a depositary bank's indorsement will make it more difficult for other banks to identify the depositary bank. The indorsement standard in appendix D prohibits such material in subsequent collecting bank indorsements. The existence of a bank indorsement provides notice of the restrictive indorsement without any additional words.

D. 229.35(d) Indorsement for Depositary Bank

1. This section permits a depositary bank to arrange with another bank to indorse checks. This practice may occur when a correspondent indorses for a respondent, or when the bank servicing an ATM or lock box indorses for the bank maintaining the account in which the check is deposited—*i.e.,* the depositary bank. If the indorsing bank applies the depositary bank's indorsement, checks will be returned to the depositary bank. If the indorsing bank does not apply the depositary bank's indorsement, by agreement with the depositary bank it may apply its own indorsement as the depositary bank indorsement. In that case, the depositary bank's own indorsement on the check (if any) should avoid the location reserved for the depositary bank. The actual depositary bank remains responsible for the availability and other requirements of [S]►s◄ubpart B, but the bank indorsing as depositary bank is considered the depositary bank for purposes of [S]►s◄ubpart C. The check will be returned[, and notice of nonpayment will be given,] to the bank indorsing as depositary bank.

2. Because the depositary bank for [S]►s◄ubpart B purposes will desire prompt notice of nonpayment, its arrangement with the indorsing bank should provide for prompt notice of nonpayment. The bank indorsing as depositary bank may require the depositary bank to agree to take up the check if the check is not paid even if the depositary bank's indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement varying the effect of provisions of [S]►s◄ubpart C under § 229.37.

XXII. Section 229.36 Presentment and Issuance of Checks

[A. 229.36(a) Payable Through and Payable at Checks

1. For purposes of Subpart C, the regulation defines a payable-through or payable-at bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of § 229.30(a) and the notice of nonpayment requirements of § 229.33 are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. This provision is intended to speed the return of checks that are payable through or at a bank to the depositary bank.]

►A. 229.36(a) Receipt of Electronic Collection Items

1. This paragraph sets forth the circumstances under which a paying bank has agreed to accept an electronic collection item from the presenting bank for purposes of subpart C. There are two different ways a paying bank can agree to accept an electronic collection item from the presenting bank for purposes of subpart C:

a. First, a paying bank may have a direct contractual relationship with the presenting bank under which it has agreed to accept electronic collection items directly from the presenting bank.

b. Second, a paying bank may have otherwise agreed with the presenting bank to accept electronic collection items. For example, the presenting bank and paying bank may both be members of the same clearing house, under the rules of which the paying bank has agreed to accept electronic collection items from the presenting bank.

2. The presenting bank must deliver the electronic collection item to the electronic

location designated by the paying bank. Accordingly, regardless of the means by which a paying bank agrees to accept electronic collection items from the presenting bank, the paying bank's agreement with the presenting bank must designate an electronic presentment point.

3. This paragraph also sets forth when a paying bank receives an electronic collection item. A bank "receives" an electronic collection item when that item is delivered to the electronic presentment point designated by the bank or when the electronic collection item is otherwise made available for retrieval or review in accordance with an agreement between the paying bank and the presenting bank. For example, if a paying bank designates an Internet protocol (IP) address as its electronic presentment point, the paying bank has received the electronic collection item when it is delivered to that address. In contrast, if the paying bank has an arrangement with a presenting bank whereby the presenting bank sends the electronic collection item to its storage device and then provides the paying bank with access to the storage device for retrieving electronic collection items, the electronic collection item is received by the paying bank when the presenting bank makes the electronic collection item available for the paying bank to retrieve or review from storage device in accordance with the agreement between the presenting bank and the paying bank.◀

B. 229.36(b) [*Receipt at Bank Office or Processing Center*]▶*Receipt of paper checks.*◀

[1. This paragraph seeks to facilitate efficient presentment of checks to promote early return [or notice of nonpayment] to the depositary bank and clarifies the law as to the effect of presentment by routing number. This paragraph differs from § 229.32(a) because presentment of checks differs from delivery of returned checks.]

[2]▶1◀. The paragraph specifies four locations at which the paying bank must accept presentment of ▶paper◀ checks. Where the check is payable through a bank and the check is sent to that bank, the payable-through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

a. Delivery of checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. [This is the way most checks are presented by banks today.] This provision adopts the common law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (*See* also U.C.C. 4–204(c).) If a bank designates different locations for the presentment of forward collection checks bearing different routing numbers, for purposes of this paragraph it requests presentment of checks bearing a particular routing number only at the location designated for receipt of forward collection checks bearing that routing number.

[d]▶b◀. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered by delivery to that office or other location. If the address is too general to identify a particular office, delivery may be made at any office consistent with the address. For example, if the address is "San Francisco, California," each office in San Francisco must accept presentment. The designation of an address on the check generally is in the control of the paying bank.

[b]▶c◀. i. Delivery may be made at an office of the bank associated with the routing number on the check. The office associated with the routing number of a bank is found in *American Bankers Association Key to Routing Numbers,* published by an agent of the American Bankers Association, which lists a city and state address for each routing number. Checks generally are handled by collecting banks on the basis of the nine-digit routing number encoded in magnetic ink (or on the basis of the fractional form routing number if the magnetic ink characters are obliterated) on the check, rather than the printed name or address. ▶In the case of a substitute check derived from an electronic collection item, delivery may be made at an office of the bank associated with the routing number in the electronic image of or electronic information related to the check.◀ The definition of a paying bank in [§ 229.2(z)]▶§ 229.2(ii)◀ includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable-through bank, not that of the payor bank. As the payor bank has selected the payable-through bank as the point through which presentment is to be made, it is proper to treat the payable-through bank as the paying bank for purposes of this section.

ii. There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank generally may control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

iii. In some cases, a paying bank may have several offices in the city associated with the routing number. In such case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank normally would deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

[c]▶d◀. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with U.C.C. 3–111, which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay. Thus, there is a trade-off for a paying bank between specifying a particular address on a check to limit locations of delivery, and simply stating the name of the bank to encourage wider currency for the check.

3. This paragraph may affect U.C.C. 3–111 to the extent that the U.C.C. requires presentment to occur at a place specified in the instrument.

C. [[Reserved]

D. 229.36(d)]▶229.36(c)◀ Liability of Bank During Forward Collection

1. This paragraph makes settlement between banks during forward collection final when made, subject to any deferment of credit, just as settlements between banks during the return of checks are final. In addition, this paragraph clarifies that this change does not affect the liability scheme under U.C.C. 4–201 during forward collection of a check. That U.C.C. section provides that, unless a contrary intent clearly appears, a bank is an agent or subagent of the owner of a check, but that Article 4 of the U.C.C. applies even though a bank may have purchased an item and is the owner of it. This paragraph preserves the liability of a collecting bank to prior collecting banks and the depositary bank's customer for negligence during the forward collection of a check under the U.C.C., even though this paragraph provides that settlement between banks during forward collection is final rather than provisional. Settlement by a paying bank is not considered to be final payment for the purposes of U.C.C. 4–215(a)(2) or (3), because a paying bank has the right to recover settlement from a returning or depositary bank to which it returns a check under this subpart. Other provisions of the U.C.C. not superseded by this subpart, such as section 4–202, also continue to apply to the forward collection of a check and may apply to the return of a check. (*See* definition of returning bank in [§ 229.2(cc)]▶§ 229.2(oo)◀.)

[E. 229.36(e) Issuance of Payable Through Checks

1. If a bank arranges for checks payable by it to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, and location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend "payable through" followed by the name of the payable-through bank. The first four digits of the nine-digit routing number and the location of the bank by which the check is payable must be associated with the same check processing region. (This section does not affect § 229.36(b).) The required information is deemed conspicuous if it is printed in a type size not smaller than six-point type and if it is contained in the title plate, which is located in the lower left quadrant of the check. The required information may be conspicuous if it is located elsewhere on the check.

2. If a payable-through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depositary bank or others as provided in § 229.38. For example, a bank by which a payable-through check is payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. Similarly, a bank may be liable under § 229.38 if a check payable by it that is not payable through another bank is labeled as provided in this section. For example, a bank that holds checking accounts and processes checks at a central location but has widely-dispersed branches may be liable under this section if it labels all of its checks as "payable through" a single branch and includes the name, address, and four-digit routing symbol of another branch. These checks would not be payable through another bank and should not be labeled as payable-through checks. (All of a bank's offices within the United States are considered part of the same bank; *see* § 229.2(e).) In this example, the bank by which the checks are payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under Subpart B, due to the mislabeled check. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.]

[F. 229.36(f)]►D. 229.36(d)◄ Same-Day Settlement

1. This paragraph provides that, under certain conditions, a paying bank must settle with a presenting bank for a check on the same day the check is presented in order to avail itself of the ability to return the check on its next banking day under U.C.C. 4–301 and 4–302. This paragraph does not apply to checks presented for immediate payment over the counter. Settling for a check under this paragraph does not constitute final payment of the check under the U.C.C. This paragraph does not supersede or limit the rules governing collection and return of checks through Federal Reserve Banks that are contained in Subpart A of Regulation J (12 CFR part 210).

2. Presentment requirements.

a. Location and time.

i. For presented checks to qualify for mandatory same-day settlement, information accompanying the checks must indicate that presentment is being made under this paragraph—*e.g.* "these checks are being presented for same-day settlement"—and must include a demand for payment of the total amount of the checks together with appropriate payment instructions in order to enable the paying bank to discharge its settlement responsibilities under this paragraph. In addition, the check or checks must be presented at a location designated by the paying bank for receipt of checks for same-day settlement by 8:00 a.m. local time of that location. [The designated presentment location must be a location at which the paying bank would be considered to have received a check under § 229.36(b). The paying bank may not designate a location solely for presentment of checks subject to settlement under this paragraph; by designating a location for the purposes of § 229.36(f), the paying bank agrees to accept checks at that location for purposes of § 229.36(b).]

►ii. Electronic presentment. A paying bank may require that checks presented for same-day settlement under this paragraph be presented as electronic collection items to a designated electronic presentment point. If a paying bank so requires, the presenting bank must present checks for same-day settlement as electronic collection items, and may not present paper checks to physical locations for receiving same-day settlement under this section. An electronic collection item presented for same-day settlement is subject to the provisions of this subpart as if it were a check (*See* § 229.33). Therefore, references to checks in this subpart include electronic collection items presented under § 229.36(d).

iii. A paying bank may designate a presentment location for paper checks, but the designated presentment location must be a location at which the paying bank would be considered to have received a check under § 229.36(b). If the paying bank does not designate any presentment location, it must accept presentment for same-day settlement at any location identified in § 229.36(b), i.e., at an address of the bank associated with the routing number on the check, at any branch or head office if the bank is identified on the check by name without address, or at a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address. With the exception of receiving electronic collection items, the paying bank may not designate a location solely for presentment of checks subject to settlement under this paragraph; by designating a location for the purposes of § 229.36(d), the paying bank agrees to accept checks at that location for the purposes of § 229.36(b).◄

[ii. The designated presentment location also must be within the check processing region consistent with the nine-digit routing number encoded in magnetic ink on the check. A paying bank that uses more than one routing number associated with a single check processing region may designate, for purposes of this paragraph, one or more locations in that check processing region at which checks will be accepted, but the paying bank must accept any checks with a routing number associated with that check processing region at each designated location. A paying bank may designate a presentment location for traveler's checks with an 8000-series routing number anywhere in the country because these traveler's checks are not associated with any check processing region. The paying bank, however, must accept at that presentment location any other checks for which it is paying bank that have a routing number consistent with the check processing region of that location.]

[iii If the paying bank does not designate a presentment location, it must accept presentment for same-day settlement at any location identified in § 229.36(b), i.e., at an address of the bank associated with the routing number on the check, at any branch or head office if the bank is identified on the check by name without address, or at a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address.] ►iv.◄ A paying bank and a presenting bank may agree that checks will be accepted for same-day settlement at an alternative location (e.g., at an intercept processor located in a different check processing region) or that the cut-off time for same-day settlement be earlier or later than 8:00 a.m. local time.

[iv]►v◄. In the case of a check payable through a bank but payable by another bank, this paragraph does not authorize direct presentment to the bank by which the check is payable. The requirements of same-day settlement under this paragraph would apply to a payable-through or payable-at bank to which the check is sent for payment or collection.

b. Reasonable delivery requirements. A check is considered presented when it is delivered to and payment is demanded at a location specified in paragraph [(f)(1)]►(d)(1)◄. Ordinarily, a presenting bank will find it necessary to contact the paying bank to determine the appropriate presentment location and any delivery instructions. Further, because presentment might not take place during the paying bank's banking day, a paying bank may establish reasonable delivery requirements to safeguard the checks presented, such as use of a night depository. If a presenting bank fails to follow reasonable delivery requirements established by the paying bank, it runs the risk that it will not have presented the checks. However, if no reasonable delivery requirements are established or if the paying bank does not make provisions for accepting delivery of checks during its non-business hours, leaving the checks at the presentment location constitutes effective presentment.

c. Sorting of checks. A paying bank may require that checks presented to it for same-day settlement be sorted separately from other forward collection checks it receives as a collecting bank or returned checks it receives as a returning or depositary bank. For example, if a bank provides correspondent check collection services and receives unsorted checks from a respondent bank that include checks for which it is the paying bank and that would otherwise meet the requirements for same-day settlement under this section, the collecting bank need not make settlement in accordance with paragraph [(f)(2)]►(d)(3)◄. If the collecting bank receives sorted checks from its respondent bank, consisting only of checks for which the collecting bank is the paying bank and that meet the requirements for same-day settlement under this paragraph, the collecting bank may not charge a fee for handling those checks and must make settlement in accordance with this paragraph.

3. Settlement

a. If a bank presents a check in accordance with the time and location requirements for presentment under paragraph [(f)(1)]►(d)(1)◄, the paying bank either must settle for the check on the business day it receives the check without charging a presentment fee or return the check prior to

the time for settlement. (This return deadline is subject to extension under § 229.30(c).) The settlement must be in the form of a credit to an account designated by the presenting bank at a Federal Reserve Bank (e.g., a Fedwire transfer). The presenting bank may agree with the paying bank to accept settlement in another form (e.g., credit to an account of the presenting bank at the paying bank or debit to an account of the paying bank at the presenting bank). The settlement must occur by the close of Fedwire on the business day the check is received by the paying bank. Under the provisions of § 229.34(c), a settlement owed to a presenting bank may be set off by adjustments for previous settlements with the presenting bank. (*See* also § 229.39(d).)

b. Checks that are presented after the 8 a.m. (local time ►of the paying bank◄) presentment deadline for same-day settlement and before the paying bank's cut-off hour are treated as if they were presented under other applicable law and settled for or returned accordingly. However, for purposes of settlement only, the presenting bank may require the paying bank to treat such checks as presented for same-day settlement on the next business day in lieu of accepting settlement by cash or other means on the business day the checks are presented to the paying bank. Checks presented after the paying bank's cut-off hour or on non-business days, but otherwise in accordance with this paragraph, are considered presented for same-day settlement on the next business day.

4. Closed Paying Bank

a. There may be certain business days that are not banking days for the paying bank. Some paying banks may continue to settle for checks presented on these days (e.g., by opening their back office operations or by using an intercept processor). In other cases, a paying bank may be unable to settle for checks presented on a day it is closed.

If the paying bank closes on a business day and checks are presented to the paying bank in accordance with paragraph [(f)(1)]►(d)(1)◄, the paying bank is accountable for the checks unless it settles for or returns the checks by the close of Fedwire on its next banking day. In addition, checks presented on a business day on which the paying bank is closed are considered received on the paying bank's next banking day for purposes of the U.C.C. midnight deadline (U.C.C. 4–301 and 4–302) and this regulation's expeditious return [and notice of nonpayment] provisions.

b. If the paying bank is closed on a business day voluntarily, the paying bank must pay interest compensation, as defined in [§ 229.2(oo)]►§ 229.2(bb)◄, to the presenting bank for the value of the float associated with the check from the day of the voluntary closing until the day of settlement. Interest compensation is not required in the case of an involuntary closing on a business day, such as a closing required by state law. In addition, if the paying bank is closed on a business day due to emergency conditions, settlement delays and interest compensation may be excused under § 229.38(e) or U.C.C. 4–109(b).

5. Good faith. Under § 229.38(a), both presenting banks and paying banks are held to a standard of good faith, defined in [§ 229.2(nn)]►§ 229.2(z)◄ to mean honesty in fact and the observance of reasonable commercial standards of fair dealing. For example, designating a presentment location or changing presentment locations for the primary purpose of discouraging banks from presenting checks for same-day settlement might not be considered good faith on the part of the paying bank. Similarly, presenting a large volume of checks without prior notice could be viewed as not meeting reasonable commercial standards of fair dealing and therefore may not constitute presentment in good faith. In addition, if banks, in the general course of business, regularly agree to certain practices related to same-day settlement, it might not be considered consistent with reasonable commercial standards of fair dealing, and therefore might not be considered good faith, for a bank to refuse to agree to those practices if agreeing would not cause it harm.

6. U.C.C. sections affected. This paragraph directly affects the following provisions of the U.C.C. and may affect other sections or provisions:

a. Section 4–204(b)(1), in that a presenting bank may not send a check for same-day settlement directly to the paying bank, if the paying bank designates a different location in accordance with paragraph [(f)(1)]►(d)(1)◄.

b. Section 4–213(a), in that the medium of settlement for checks presented under this paragraph is limited to a credit to an account at a Federal Reserve Bank and that, for checks presented after the deadline for same-day settlement and before the paying bank's cut-off hour, the presenting bank may require settlement on the next business day in accordance with this paragraph rather than accept settlement on the business day of presentment by cash.

c. Section 4–301(a), in that, to preserve the ability to exercise deferred posting, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.

d. Section 4–302(a), in that, to avoid accountability, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.

XXIII. Section 229.37 Variations by Agreement

A. This section is similar to U.C.C. 4–103, and permits consistent treatment of agreements varying Article 4 or Subpart C, given the substantial interrelationship of the two documents. To achieve consistency, the official comment to U.C.C. 4–103(a) (which in turn follows U.C.C. 1–201(3)) should be followed in construing this section. For example, as stated in Official Comment 2 to section 4–103, owners of items and other interested parties are not affected by agreements under this section unless they are parties to the agreement or are bound by adoption, ratification, estoppel, or the like. In particular, agreements varying this subpart that delay the return of a check beyond the times required by this subpart may result in liability under § 229.38 to entities not party to the agreement.

B. The Board has not followed U.C.C. 4–103(b), which permits Federal Reserve regulations and operating letters, clearinghouse rules, and the like to apply to parties that have not specifically assented. Nevertheless, this section does not affect the status of such agreements under the U.C.C.

C. The following are examples of situations where variation by agreement is permissible, subject to the limitations of this section:

►1. A depositary bank may agree with a paying bank or a returning bank to accept electronic returns even when the item is available for return. (*See* § 229.32(a).)◄

[1]►2◄. A depositary bank may authorize another bank to apply the other bank's indorsement to a check as the depositary bank. (*See* § 229.35(d).)

[2]►3◄. A depositary bank may authorize returning banks to commingle qualified returned checks with forward collection checks. (*See* [§ 229.32(a)]►§ 229.32(b)◄.)

[3]►4◄. A depositary bank may limit its liability to its customer in connection with the late return of a deposited check where the lateness is caused by markings on the check by the depositary bank's customer or prior indorser in the area of the depositary bank indorsement. (*See* § 229.38(d).)

[4]►5◄. A paying bank may require its customer to assume the paying bank's liability for delayed or missent checks where the delay or missending is caused by markings placed on the check by the paying bank's customer that obscured a properly placed indorsement of the depositary bank. (*See* § 229.38(d).)

[5]►6◄. A collecting or paying bank may agree to accept forward collection checks without the indorsement of a prior collecting bank. (*See* § 229.35(a).)

[6]►7◄. A bank may agree to accept returned checks without the indorsement of a prior bank. (See § 229.35(a).)

[7. A presenting bank may agree with a paying bank to present checks for same-day settlement at a location that is not in the check processing region consistent with the routing number on the checks. (*See* § 229.36(f)(1)(i).)]

8. A presenting bank may agree with a paying bank to present checks for same-day settlement by a deadline earlier or later than 8:00 a.m. (*See* [§ 229.36(f)(1)(ii)]►§ 229.36(d)(1)(ii)◄.)

9. A presenting bank and a paying bank may agree that presentment takes place when the paying bank receives an [electronic transmission of information describing the check rather than upon delivery of the physical check] ►electronic collection item◄. (*See* § 229.36[(b)]►(a)◄.)

[10. A depositary bank may agree with a paying or returning bank to accept an image or other notice in lieu of a returned check even when the check is available for return under this part. Except to the extent that other parties interested in the check assent to or are bound by the variation of the notice-in-lieu provisions of this part, banks entering into such an agreement may be responsible

under this part or other applicable law to other interested parties for any losses caused by the handling of a returned check under the agreement. (*See* §§ 229.30(f), 229.31(f), 229.38(a).)]

D. The Board expects to review the types of variation by agreement that develop under this section and will consider whether it is necessary to limit certain variations.

XXIV. Section 229.38 Liability

A. 229.38(a) Standard of care; liability; measure of damages

1. The standard of care established by this section applies to any bank covered by the requirements of [S]►s◄ubpart C of the regulation. Thus, the standard of care applies to a paying bank under §§ 229.30 [and 229.33], to a returning bank under § 229.31, to a depositary bank under §§ 229.32 [and 229.33], to a bank erroneously receiving a returned check [or written notice of nonpayment] as depositary bank under § 229.32(d), and to a bank indorsing a check under § 229.35. The standard of care is similar to the standard imposed by U.C.C. 1–203 and 4–103(a) and includes a duty to act in good faith, as defined in [§ 229.2(nn)]►§ 229.2(z)◄ of this regulation.

2. A bank not meeting this standard of care is liable to the depositary bank, the depositary bank's customer, the owner of the check, or another party to the check. The depositary bank's customer is usually a depositor of a check in the depositary bank (but see § 229.35(d)). The measure of damages provided in this section (loss incurred up to amount of check, less amount of loss party would have incurred even if bank had exercised ordinary care) is based on U.C.C. 4–103(e) (amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care), as limited by 4–202(c) (bank is liable only for its own negligence and not for actions of subsequent banks in chain of collection). This subpart does not absolve a collecting bank of liability to prior collecting banks under U.C.C. 4–201.

3. Under this measure of damages, a depositary bank or other person must show that the damage incurred results from the negligence proved. For example, the depositary bank may not simply claim that its customer will not accept a charge-back of a returned check, but must prove that it could not charge back when it received the returned check and could have charged back if no negligence had occurred, and must first attempt to collect from its customer. (*See Marcoux* v. *Van Wyk,* 572 F.2d 651 (8th Cir. 1978); *Appliance Buyers Credit Corp.* v. *Prospect Nat'l Bank,* 708 F.2d 290 (7th Cir. 1983).) Generally, a paying or returning bank's liability would not be reduced because the depositary bank did not place a hold on its customer's deposit before it learned of nonpayment of the check.

4. This paragraph also states that it does not affect a paying bank's liability to its customer. Under U.C.C. 4–402, for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

B. 229.38(b) Paying Bank's Failure To Make Timely Return

1. Section 229.30(a) imposes requirements on the paying bank for expeditious return of a check and leaves in place the U.C.C. deadlines (as they may be modified by § 229.30(c)), which may allow return at a different time. This paragraph clarifies that the paying bank could be liable for failure to meet either standard, but not for failure to meet both. The regulation intends to preserve the paying bank's accountability for missing its midnight or other deadline under the U.C.C., (e.g., sections 4–215 and 4–302), provisions that are not incorporated in this regulation, but may be useful in establishing the time of final payment by the paying bank.

C. 229.38(c) Comparative Negligence

1. This paragraph establishes a "pure" comparative negligence standard for liability under [S]►s◄ubpart C of this regulation. This comparative negligence rule may have particular application where a paying or returning bank delays in returning a check because of difficulty in identifying the depositary bank. Some examples will illustrate liability in such cases. In each example, it is assumed that the returned check is received by the depositary bank after it has made funds available to its customer, that it may no longer recover the funds from its customer, and that the inability to recover the funds from the customer is due to a delay in returning the check contrary to the standards established by §§ 229.30(a) or 229.31(a).

2. Examples.

a. If a depositary bank fails to use the indorsement required by this regulation, and this failure is caused by a failure to exercise ordinary care, and if a paying or returning bank is delayed in returning the check because additional time is required to identify the depositary bank or find its routing number, the paying or returning bank's liability to the depositary bank would be reduced or eliminated.

b. If the depositary bank uses the standard indorsement, but that indorsement is obscured by a subsequent collecting bank's indorsement, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depositary bank or find its routing number, the paying or returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the collecting bank may be liable to the depositary bank to the extent that its negligence in indorsing the check caused the paying or returning bank's delay.

c. If a depositary bank accepts a check that has printing, a carbon band, or other material on the back of the check that existed at the time the check was issued, and the depositary bank's indorsement is obscured by the printing, carbon band, or other material, and a paying or returning bank is delayed in returning the check because additional time was required to identify the depositary bank, the returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depositary bank to the extent that the printing, carbon band, or other material caused the delay.

D. 229.38(d) Responsibility for Certain Aspects of Checks

1. Responsibility for back of check. The indorsement standard in § 229.35 is most effective if the back of the check remains clear of other matter that may obscure bank indorsements. Because bank indorsements are usually applied by automated equipment, it is not possible to avoid pre-existing matter on the back of the check. For example, bank indorsements are not required to avoid a carbon band or printed, stamped, or written terms or notations on the back of the check. Accordingly, this provision places responsibility on the paying bank, depositary bank, or reconverting bank, as appropriate, for keeping the back of the check clear for bank indorsements during forward collection and return.

2. ANS X9.100–140 provides that an image of an original check must be reduced in size when placed on the first substitute check associated with that original check. (The image thereafter would be constant in size on any subsequent substitute check that might be created.) Because of this size reduction, the location of an indorsement, particularly a depositary bank indorsement, applied to an original paper check likely will change when the first reconverting bank creates a substitute check that contains that indorsement within the image of the original paper check. If the indorsement was applied to the original paper check in accordance with appendix D's location requirements for indorsements applied to existing paper checks, and if the size reduction of the image causes the placement of the indorsement to no longer be consistent with the appendix's requirements, then the reconverting bank bears the liability for any loss that results from the shift in the placement of the indorsement. Such a loss could result either because the original indorsement applied in accordance with appendix D is rendered illegible by a subsequent indorsement that later is applied to the substitute check in accordance with appendix D, or because the subsequent bank cannot apply its indorsement to the substitute check legibly in accordance with appendix D as a result of the shift in the previous indorsement.

Example.

In accordance with appendix D's specifications, a depositary bank sprays its indorsement onto a business-sized original check between 3.0 inches from the leading edge of the check and 1.5 inches from the trailing edge of the check. The check's conversion to electronic form and subsequent reconversion to paper form causes the location of the depositary bank indorsement, now contained within the image of the original check, to change such that it is less than 3.0 inches from the leading edge of the substitute check. In accordance with appendix D's specifications, a subsequent collecting bank sprays its indorsement onto the substitute check between the leading edge of the check and 3.0 inches from the leading edge of the check and the indorsement happens to be on top of the shifted depositary bank indorsement. If the check is returned unpaid and the return is not expeditious because of the illegibility of the depositary bank indorsement, and the

depositary bank incurs a loss that it would not have incurred had the return been expeditious, the reconverting bank bears the liability for that loss.

[3. Responsibility for payable-through checks.

a. This paragraph provides that the bank by which a payable-through check is payable is liable for damages under paragraph (a) of this section to the extent that the check is not returned through the payable-through bank as quickly as would have been necessary to meet the requirements of § 229.30(a)(1) (the 2-day/4-day test) had the bank by which it is payable received the check as paying bank on the day the payable-through bank received it. The location of the bank by which a check is payable for purposes of the 2-day/4-day test may be determined from the location or the first four digits of the routing number of the bank by which the check is payable. This information should be stated on the check. (See § 229.36(e) and accompanying Commentary.) Responsibility under paragraph (d)(2) does not include responsibility for the time required for the forward collection of a check to the payable-through bank.

b. Generally, liability under paragraph (d)(2) will be limited in amount. Under § 229.33(a), a paying bank that returns a check in the amount of $2,500 or more must provide notice of nonpayment to the depositary bank by 4:00 p.m. on the second business day following the banking day on which the check is presented to the paying bank. Even if a payable-through check in the amount of $2,500 or more is not returned through the payable-through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depositary bank should not suffer damages unless it has not received timely notice of nonpayment. Thus, ordinarily the bank by which a payable-through check is payable would be liable under paragraph (a) only for checks in amounts up to $2,500, and the paying bank would be responsible for notice of nonpayment for checks in the amount of $2,500 or more.]

[4]►3◄. Responsibility under paragraph[s] (d)(1) [and (d)(2)] is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraph[s] (d)(1) [and (d)(2)] is treated in the same way as the degree of negligence under paragraph (c) of this section.

E. 229.38(e) Timeliness of Action

1. This paragraph excuses certain delays. It adopts the standard of U.C.C. 4–109(b).

F. 229.38(f) Exclusion

1. This paragraph provides that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611(a) and (b), and the bona fide error provision of 611(c) of the EFA Act (12 U.S.C. 4010(a), (b), and (c)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Allowing punitive damages for delays in the return of checks where no actual damages are incurred would only encourage litigation and provide little or no benefit to the check collection system. In view of the provisions of paragraph (a), which incorporate traditional bank collection standards based on negligence, the provision on bona fide error is not included in [S]►s◄ubpart C.

G. 229.38(g) Jurisdiction

1. The EFA Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

H. 229.38(h) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the Commentary to this regulation, which is issued as an official Board interpretation, as well as on the regulation itself.

XXV. Section 229.39 Insolvency of Bank

A. Introduction

1. These provisions cover situations where a bank becomes insolvent during collection or return and are derived from U.C.C. 4–216. They are intended to apply to all banks.

B. 229.39(a) Duty of Receiver

1. This paragraph requires a receiver of a closed bank to return a check to the prior bank if it does not pay for the check. This permits the prior bank, as holder, to pursue its claims against the closed bank or prior indorsers on the check.

C. 229.39(b) Preference Against Paying or Depositary Bank

1. This paragraph gives a bank a preferred claim against a closed paying bank that finally pays a check without settling for it or a closed depositary bank that becomes obligated to pay a returned check without settling for it. If the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

D. 229.39(c) Preference Against Paying, Collecting, or Depositary Bank

1. This paragraph gives a bank a preferred claim against a closed collecting, paying, or returning bank that receives settlement but does not settle for a check. (See Commentary to § 229.35(b) for discussion of prior and subsequent banks.) As in the case of § 229.39(b), if the bank with a preferred claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the preferred claim.

E. 229.39(d) Preference Against Presenting Bank

1. This paragraph gives a paying bank a preferred claim against a closed presenting bank in the event that the presenting bank breaches an amount or encoding warranty as provided in § 229.34(c)(1) or (3) and does not reimburse the paying bank for adjustments for a settlement made by the paying bank in excess of the value of the checks presented. This preference is intended to have the effect of a perfected security interest and is intended to put the paying bank in the position of a secured creditor for purposes of the receivership provisions of the Federal Deposit Insurance Act and similar provisions of state law.

F. 229.39(e) Finality of Settlement

1. This paragraph provides that insolvency does not interfere with the finality of a settlement, such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.

XXVI. Section 229.40 Effect on Merger Transaction

A. When banks merge, there is normally a period of adjustment required before their operations are consolidated. To allow for this adjustment period, the regulation provides that the merged banks may be treated as separate banks for a period of up to one year after the consummation of the transaction. The term merger transaction is defined in [§ 229.2(t)]►§ 229.2(dd)◄. This rule affects the status of the combined entity in a number of areas in this subpart. For example:

1. The paying bank's responsibility for expeditious return (§ 229.30).

2. The returning bank's responsibility for expeditious return (§ 229.31).

[3. Whether a returning bank is entitled to an extra day to qualify a return that will be delivered directly to a depositary bank that has merged with the returning bank (§ 229.31(a)).]

[4]►3◄. Where the depositary bank must accept returned checks [(§ 229.32(a))] ►§ 229.32(b)◄.

[5. Where the depositary bank must accept notice of nonpayment (§ 229.33(c)).]

[6]►4◄. Where a paying bank must accept presentment of checks (§ 229.36(b)).

XXVII. Section 229.41 Relation to State Law

A. This section specifies that state law relating to the collection of checks is preempted only to the extent that it is inconsistent with this regulation. Thus, this regulation is not a complete replacement for state laws relating to the collection or return of checks.

XXVIII. Section 229.42 Exclusions

A. Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the expeditious-return[, notice-of-nonpayment,] and same-day settlement requirements of subpart C of this part. Other provisions of this subpart continue to apply to the checks. This exclusion does not apply to checks drawn by the U.S. government on banks.

XXIX. Section 229.43 Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

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B. 229.43(b) Rules Applicable to Pacific Island Checks

1. When a bank handles a Pacific island check as if it were a check as defined in § 229.2(k), the bank is subject to certain provisions of Regulation CC, as provided in

this section. Because the Pacific island bank is not a bank as defined in § 229.2(e), it is not a paying bank as defined in ⟦§ 229.2(z)⟧►§ 229.2(ii)◄ (unless otherwise noted in this section). Pacific island banks are not subject to the provisions of Regulation CC.

2. A bank may agree to handle a Pacific island check as a returned check under § 229.31 and may convert the returned Pacific island check to a qualified returned check. The returning bank is not, however, subject to the expeditious-return requirements of § 229.31. The returning bank may receive the Pacific island check directly from a Pacific island bank or from another returning bank. As a Pacific island bank is not a paying bank under Regulation CC, § 229.31(c) does not apply to a returning bank settling with the Pacific island bank.

3. A depositary bank that handles a Pacific island check is not subject to the provisions of subpart B of Regulation CC, including the availability, notice, and interest accrual requirements, with respect to that check. If, however, a bank accepts a Pacific island check for deposit (or otherwise accepts the check as transferee) and collects the Pacific island check in the same manner as other checks, the bank is subject to the provisions of § 229.32, including the provisions regarding time and manner of settlement for returned checks in ⟦§ 229.32(b)⟧►§ 229.32(c)◄, in the event the Pacific island check is returned by a returning bank. If the depositary bank receives the returned Pacific island check directly from the Pacific island bank, however, the provisions of ⟦§ 229.32(b)⟧►§ 229.32(c)◄ do not apply, because the Pacific island bank is not a paying bank under Regulation CC. ⟦The depositary bank is not subject to the notice of nonpayment provisions in § 229.33 for Pacific island checks.⟧

4. Banks that handle Pacific island checks in the same manner as other checks are subject to the indorsement provisions of § 229.35. Section 229.35(c) eliminates the need for the restrictive indorsement "pay any bank." For purposes of § 229.35(c), the Pacific island bank is deemed to be a bank.

5. Pacific island checks will often be intermingled with other checks in a single cash letter. Therefore, a bank that handles Pacific island checks in the same manner as other checks is subject to the transfer warranty provision in § 229.34(c)(2) regarding accurate cash letter totals and the encoding warranty in § 229.34(c)(3). ►Similarly, a bank that handles Pacific island checks in the same manner as other checks may transfer electronic collection items, electronic returns, or electronic images and related electronic information as if they were electronic collection items or electronic returns derived from Pacific island checks. Accordingly, a bank makes the warranties in §§ 229.34(a) and (e) with respect to Pacific island checks.◄ A bank that acts as a returning bank for a Pacific island check is not subject to the warranties in § 229.34⟦(a)⟧►(e)◄. Similarly, because the Pacific island bank is not a "bank" or a "paying bank" under Regulation CC, § 229.34 ⟦(b), (c)(1), and (c)(4)⟧►(b)(1), (b)(4), and (c)◄ do not apply. For the same reason, the provisions of § 229.36 governing paying bank responsibilities such as place of receipt and same-day settlement do not apply to checks presented to a Pacific island bank, and the liability provisions applicable to paying banks in § 229.38 do not apply to Pacific island banks. Section 229.36⟦(d)⟧►(c)◄, regarding finality of settlement between banks during forward collection, applies to banks that handle Pacific island checks in the same manner as other checks, as do the liability provisions of § 229.38, to the extent the banks are subject to the requirements of Regulation CC as provided in this section, and §§ 229.37 and 229.39 through 229.42.

XXX. § 229.51 General Provisions Governing Substitute Checks

A. 229.51(a) Legal Equivalence

1. Section 229.51(a) states that a substitute check for which a bank has provided the substitute check warranties is the legal equivalent of the original check for all purposes and all persons if it meets the accuracy and legend requirements. Where the law (or a contract) requires production of the original check, production of a legally equivalent substitute check would satisfy that requirement. A person that receives a substitute check cannot be assessed costs associated with the creation of the substitute check, absent agreement to the contrary.

Examples.

a. A presenting bank presents a substitute check that meets the legal equivalence requirements to a paying bank. The paying bank cannot refuse presentment of the substitute check on the basis that it is a substitute check, because the substitute check is the legal equivalent of the original check.

b. A depositor's account agreement with a bank provides that the depositor is entitled to receive original cancelled checks back with his or her periodic account statement. The bank may honor that agreement by providing original checks, substitute checks, or a combination thereof. However, a bank may not honor such an agreement by providing something other than an original check or a substitute check.

c. A mortgage company argues that a consumer missed a monthly mortgage payment that the consumer believes she made. A legally equivalent substitute check concerning that mortgage payment could be used in the same manner as the original check to prove the payment.

2. A person other than a bank that creates a substitute check could transfer, present, or return that check only by agreement unless and until a bank provided the substitute check warranties.

3. To be the legal equivalent of the original check, a substitute check must accurately represent all the information on the front and back of the check as of the time the original check was truncated. An accurate representation of information that was illegible on the original check would satisfy this requirement. The payment instructions placed on the check by, or as authorized by, the drawer, such as the amount of the check, the payee, and the drawer's signature, must be accurately represented, because that information is an essential element of a negotiable instrument. Other information that must be accurately represented includes (1) the information identifying the drawer and the paying bank that is preprinted on the check, including the MICR line; and (2) other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any indorsements applied to the back of the check. A substitute check need not capture other characteristics of the check, such as watermarks, microprinting, or other physical security features that cannot survive the imaging process or decorative images, in order to meet the accuracy requirement. Conversely, some security features that are latent on the original check might become visible as a result of the check imaging process. For example, the original check might have a faint representation of the word "void" that will appear more clearly on a photocopied or electronic image of the check. Provided the inclusion of the clearer version of the word on the image used to create a substitute check did not obscure the required information listed above, a substitute check that contained such information could be the legal equivalent of an original check under § 229.51(a). However, if a person suffered a loss due to receipt of such a substitute check instead of the original check, that person could have an indemnity claim under § 229.53 and, in the case of a consumer, an expedited recredit claim under § 229.54.

4. To be the legal equivalent of the original check, a substitute check must bear the legal equivalence legend described in § 229.51(a)(2). A bank may not vary the language of the legal equivalence legend and must place the legend on the substitute check as specified by generally applicable industry standards for substitute checks contained in ANS X9.100–140.5. In some cases, the original check used to create a substitute check could be forged or otherwise fraudulent. A substitute check created from a fraudulent original check would have the same status under Regulation CC and the U.C.C. as the original fraudulent check. For example, a substitute check of a fraudulent original check would not be properly payable under U.C.C. 4–401 and would be subject to the transfer and presentment warranties in U.C.C. 4–207 and 4–208.

5. In some cases, the original check used to create a substitute check could be forged or otherwise fraudulent. A substitute check created from a fraudulent original check would have the same status under Regulation CC and the U.C.C. as the original fraudulent check. For example, a substitute check of a fraudulent original check would not be properly payable under U.C.C. 4–401 and would be subject to the transfer and presentment warranties in U.C.C. 4–207 and 4–208.

B. 229.51(b) Reconverting-Bank Duties

1. As discussed in more detail in appendix D and the commentary to section 229.35, a reconverting bank must indorse (or, if it is a paying bank with respect to the check, identify itself on) the back of a substitute check in a manner that preserves all indorsements applied, whether physically or

electronically, by persons that previously handled the check in any form for forward collection or return. Indorsements applied physically to the original check before an image of the check was captured would be preserved through the image of the back of the original check that a substitute check must contain. Indorsements applied physically to the original check after an image of the original check was captured would be conveyed as electronic indorsements (see paragraph 3 of the commentary to section 229.35(a)). If indorsements were applied electronically after an image of the original check was captured or were applied electronically after a previous substitute check was converted to electronic form, the reconverting bank must apply those indorsements physically to the substitute check. A reconverting bank is not responsible for obtaining indorsements that persons that previously handled the check should have applied but did not apply.

2. A reconverting bank also must identify itself as such on the front and back of the substitute check and must preserve on the back of the substitute check the identifications of any previous reconverting banks in accordance with appendix D. The presence on the back of a substitute check of indorsements that were applied by previous reconverting banks and identified with asterisks in accordance with appendix D would satisfy the requirement that the reconverting bank preserve the identification of previous reconverting banks. As discussed in more detail in the commentary to section 229.35, the reconverting-bank and truncating-bank routing numbers on the front of a substitute check and, if the reconverting bank is the paying bank ►or a bank that rejected a check submitted for deposit◄, the reconverting bank's routing number on the back of a substitute check are for identification only and are not indorsements or acceptances.

3. The reconverting bank must place the routing number of the truncating bank surrounded by brackets on the front of the substitute check in accordance with appendix D and ANS X9.100–140.

Example

A bank's customer, which is a nonbank business, receives checks for payment and by agreement deposits substitute checks instead of the original checks with its depositary bank. The depositary bank is the reconverting bank with respect to the substitute checks and the truncating bank with respect to the original checks. In accordance with appendix D and with ANS X9.100–140, the bank must therefore be identified on the front of the substitute checks as a reconverting bank and as the truncating bank, and on the back of the substitute checks as the depositary bank and a reconverting bank.

C. 229.51(c) Applicable Law

1. A substitute check that meets the requirements for legal equivalence set forth in this section is subject to any provision of federal or state law that applies to original checks, except to the extent such provision is inconsistent with the Check 21 Act or subpart D. A legally equivalent substitute check is subject to all laws that are not preempted by the Check 21 Act in the same manner and to the same extent as is an original check. Thus, any person could satisfy a law that requires production of an original check by producing a substitute check that is derived from the relevant original check and that meets the legal equivalence requirements of § 229.51(a).

2. A law is not inconsistent with the Check 21 Act or subpart D merely because it allows for the recovery of a greater amount of damages.

Example.

A drawer that suffers a loss with respect to a substitute check that was improperly charged to its account and for which the drawer has an indemnity claim but not a warranty claim would be limited under the Check 21 Act to recovery of the amount of the substitute check plus interest and expenses. However, if the drawer also suffered damages that were proximately caused because the bank wrongfully dishonored subsequently presented checks as a result of the improper substitute check charge, the drawer could recover those losses under U.C.C. 4–402.

XXXI. § 229.52 Substitute Check Warranties

A. 229.52(a) Warranty Content and Provision

1. The responsibility for providing the substitute check warranties begins with the reconverting bank. In the case of a substitute check created by a bank, the reconverting bank starts the flow of warranties when it transfers, presents, or returns a substitute check for which it receives consideration ►or when it rejects a check submitted for deposit and returns to its customer a substitute check◄. A bank that receives a substitute check created by a nonbank starts the flow of warranties when it transfers, presents, or returns for consideration either the substitute check it received or an electronic or paper representation of that substitute check. ►A bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check also makes the warranties.◄

►2.◄ To ensure that warranty protections flow all the way through to the ultimate recipient of a substitute check or paper or electronic representation thereof, any subsequent bank that transfers, presents, or returns for consideration either the substitute check or a paper or electronic representation of the substitute check is responsible to subsequent transferees for the warranties. Any warranty recipient could bring a claim for a breach of a substitute check warranty if it received either the actual substitute check or a paper or electronic representation of a substitute check.

[2.**]** ►3.◄ The substitute check warranties and indemnity are not given under §§ 229.52 and 229.53 by a bank that truncates the original check and by agreement transfers the original check electronically to a subsequent bank for consideration. However, parties may, by agreement, allocate liabilities associated with the exchange of electronic check information.

Example.

A bank that receives check information electronically and uses it to create substitute checks is the reconverting bank and, when it transfers, presents, or returns that substitute check, becomes the first warrantor. However, that bank may protect itself by including in its agreement with the sending bank provisions that specify the sending bank's warranties and responsibilities to the receiving bank, particularly with respect to the accuracy of the check image and check data transmitted under the agreement.

[3**]**►4◄. A bank need not affirmatively make the warranties because they attach automatically when a bank transfers, presents, or returns the substitute check (or a representation thereof) for which it receives consideration. Because a substitute check transferred, presented, or returned for consideration is warranted to be the legal equivalent of the original check and thereby subject to existing laws as if it were the original check, all U.C.C. and other Regulation CC warranties that apply to the original check also apply to the substitute check.

[4**]**►5◄. The legal equivalence warranty by definition must be linked to a particular substitute check. When an original check is truncated, the check may move from electronic form to substitute check form and then back again, such that there would be multiple substitute checks associated with one original check. When a check changes form multiple times in the collection or return process, the first reconverting bank and subsequent banks that transfer, present, or return the first substitute check (or a paper or electronic representation of the first substitute check) warrant the legal equivalence of only the first substitute check. If a bank receives an electronic representation of a substitute check and uses that representation to create a second substitute check, the second reconverting bank and subsequent transferees of the second substitute check (or a representation thereof) warrant the legal equivalence of both the first and second substitute checks. A reconverting bank would not be liable for a warranty breach under § 229.52 if the legal equivalence defect is the fault of a subsequent bank that handled the substitute check, either as a substitute check or in other paper or electronic form.

[5**]**►6◄. The warranty in § 229.52(a)**[**(2)**]**►(1)(ii)◄, which addresses multiple payment requests for the same check, is not linked to a particular substitute check but rather is given by each bank handling the substitute check, an electronic representation of a substitute check, or a subsequent substitute check created from an electronic representation of a substitute check. All banks that transfer, present, or return a substitute check (or a paper or electronic representation thereof) therefore provide the warranty regardless of whether the ultimate demand for double payment is based on the original check, the substitute check, or some other electronic or paper representation of the substitute or original check, and regardless of the order in which the duplicative payment requests occur. This warranty is given by the banks that transfer, present, or return a substitute check even if the demand for duplicative payment results from a fraudulent substitute check about which the warranting bank had no knowledge.

Example.

A nonbank depositor truncates a check and in lieu thereof sends an electronic version of that check to both Bank A and Bank B. Bank A and Bank B each uses the check information that it received electronically to create a substitute check, which it presents to Bank C for payment. Bank A and Bank B each is a reconverting bank that made the substitute check warranties when it presented a substitute check to and received payment from Bank C. Bank C could pursue a warranty claim for the loss it suffered as a result of the duplicative payment against either Bank A or Bank B.

►7. A bank that rejects a check for deposit and instead of the original check provides its customer with a substitute check makes the warranties in § 229.52(a)(1). As noted in the commentary to § 229. 2(uu), the Check 21 Act contemplates that nonbank persons that receive substitute checks (or representations thereof) from a bank will receive warranties and indemnities with respect to the checks. A reconverting bank that provides a substitute check to its depositor after it has rejected the check for deposit may not have received consideration for the substitute check. In order to prevent banks from being able to transfer a check the bank truncated and then reconverted without providing substitute check warranties, the regulation provides that a bank that rejects a check for deposit but provides its customer with a substitute check makes the warranties set forth in § 229.52(a)(1) regardless of whether the bank received consideration.

Example.

A bank's customer submits a check at an ATM that captures an image of the check and sends the image electronically to the bank. After reviewing the item, the bank rejects the item submitted for deposit. Instead of providing the original check to its customer, the bank provides a substitute check to its customer. This bank is the reconverting bank with respect to the substitute check and makes the warranties described in § 229.52(a)(1) regardless of whether the bank previously extended credit to its customer. (*See* commentary to § 229.2(uu).)◄

B. 229.52(b) Warranty Recipients

1. A reconverting bank makes the warranties to the person to which it transfers, presents, or returns the substitute check for consideration and to any subsequent recipient that receives either the substitute check or a paper or electronic representation derived from the substitute check. These subsequent recipients could include a subsequent collecting or returning bank, the depositary bank, the drawer, the drawee, the payee, the depositor, and any indorser. The paying bank would be included as a warranty recipient, for example because it would be the drawee of a check or a transferee of a check that is payable through it.

2. The warranties flow with the substitute check to persons that receive a substitute check or a paper or electronic representation of a substitute check. The warranties do not flow to a person that receives only the original check or a representation of an original check that was not derived from a substitute check. However, a person that initially handled only the original check could become a warranty recipient if that person later receives a returned substitute check or a paper or electronic representation of a substitute check that was derived from that original check.

►3. A reconverting bank also makes the warranties to a person to whom the bank transfers a substitute check that the bank has rejected for deposit regardless of whether the bank received consideration.◄

XXXII. § 229.53 Substitute Check Indemnity

A. 229.53(a) Scope of Indemnity

1. Each bank that for consideration transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check is responsible for providing the substitute check indemnity. ►A bank that transfers and receives consideration for an electronic collection item or electronic return that is an electronic representation of a substitute check also is responsible for providing the indemnity.◄

►2.◄The indemnity covers losses due to any subsequent recipient's receipt of the substitute check instead of the original check. The indemnity therefore covers the loss caused by receipt of the substitute check as well as the loss that a bank incurs because it pays an indemnity to another person. A bank that pays an indemnity would in turn have an indemnity claim regardless of whether it received the substitute check or a paper or electronic representation of the substitute check The indemnity would not apply to a person that handled only the original check or a paper or electronic version of the original check that was not derived from a substitute check.

►3. A reconverting bank also provides the substitute check indemnity to a person to whom the bank transfers a substitute check that the bank has rejected for deposit regardless of whether the bank providing the indemnity has received consideration.◄

Examples.

a. A paying bank makes payment based on a substitute check that was derived from a fraudulent original cashier's check. The amount and other characteristics of the original cashier's check are such that, had the original check been presented instead, the paying bank would have inspected the original check for security features. The paying bank's fraud detection procedures were designed to detect the fraud in question and allow the bank to return the fraudulent check in a timely manner. However, the security features that the bank would have inspected were security features that did not survive the imaging process (see the commentary to § 229.51(a)). Under these circumstances, the paying bank could assert an indemnity claim against the bank that presented the substitute check.

b. By contrast with the previous examples, the indemnity would not apply if the characteristics of the presented substitute check were such that the bank's security policies and procedures would not have detected the fraud even if the original had been presented. For example, if the check was under the threshold amount at which the bank subjects an item to its fraud detection procedures, the bank would not have inspected the item for security features regardless of the form of the item and accordingly would have suffered a loss even if it had received the original check.

c. A paying bank makes an erroneous payment based on an electronic representation of a substitute check because the electronic cash letter accompanying the electronic item included the wrong amount to be charged. The paying bank would not have an indemnity claim associated with that payment because its loss did not result from receipt of an actual substitute check instead of the original check. However, the paying bank could protect itself from such losses through its agreement with the bank that sent the check to it electronically and may have rights under other law.

d. A drawer has agreed with its bank that the drawer will not receive paid checks with periodic account statements. The drawer requested a copy of a paid check in order to prove payment and received a photocopy of a substitute check. The photocopy that the bank provided in response to this request was illegible, such that the drawer could not prove payment. Any loss that the drawer suffered as a result of receiving the blurry check image would not trigger an indemnity claim because the loss was not caused by the receipt of a substitute check. The drawer may, however, still have a warranty claim if he received a copy of a substitute check, and may also have rights under the U.C.C.

B. 229.53(b) Indemnity Amount

1. If a recipient of a substitute check is making an indemnity claim because a bank has breached one of the substitute check warranties, the recipient can recover any losses proximately caused by that warranty breach.

Examples.

a. A drawer discovers that its account has been charged for two different substitute checks that were provided to the drawer and that were associated with the same original check. As a result of this duplicative charge, the paying bank dishonored several subsequently-presented checks that it otherwise would have paid and charged the drawer returned check fees. The payees of the returned checks also charged the drawer returned check fees. The drawer would have a warranty claim against any of the warranting banks, including its bank, for breach of the warranty described in § 229.52(a)[(2)]►(1)(ii)◄. The drawer also could assert an indemnity claim. Because there is only one original check for any payment transaction, if the collecting and presenting bank had collected the original check instead of using a substitute check the bank would have been asked to make only one payment. The drawer could assert its warranty and indemnity claims against the paying bank, because that is the bank with which the drawer has a customer relationship and the drawer has received an indemnity from that bank. The drawer could recover from the indemnifying bank the amount of the erroneous charge, as well as the amount of the returned check fees charged by both the paying bank and the payees of the returned checks. If the drawer's account were an interest-bearing account, the drawer also could recover any interest lost on the erroneously debited amount and the

erroneous returned check fees. The drawer also could recover its expenditures for representation in connection with the claim. Finally, the drawer could recover any other losses that were proximately caused by the warranty breach.

b. In the example above, the paying bank that received the duplicate substitute checks also would have a warranty claim against the previous transferor(s) of those substitute checks and could seek an indemnity from that bank (or either of those banks). The indemnifying bank would be responsible for compensating the paying bank for all the losses proximately caused by the warranty breach, including representation expenses and other costs incurred by the paying bank in settling the drawer's claim.

2. If the recipient of the substitute check does not have a substitute check warranty claim with respect to the substitute check, the amount of the loss the recipient may recover under § 229.53 is limited to the amount of the substitute check, plus interest and expenses. However, the indemnified person might be entitled to additional damages under some other provision of law.

Examples.

a. A drawer received a substitute check that met all the legal equivalence requirements and for which the drawer was only charged once, but the drawer believed that the underlying original check was a forgery. If the drawer suffered a loss because it could not prove the forgery based on the substitute check, for example because proving the forgery required analysis of pen pressure that could be determined only from the original check, the drawer would have an indemnity claim. However, the drawer would not have a substitute check warranty claim because the substitute check was the legal equivalent of the original check and no person was asked to pay the substitute check more than once. In that case, the amount of the drawer's indemnity under § 229.53 would be limited to the amount of the substitute check, plus interest and expenses. However, the drawer could attempt to recover additional losses, if any, under other law.

b. As described more fully in the commentary to § 229.53(a) regarding the scope of the indemnity, a paying bank could have an indemnity claim if it paid a legally equivalent substitute check that was created from a fraudulent cashier's check that the paying bank's fraud detection procedures would have caught and that the bank would have returned by its midnight deadline had it received the original check. However, if the substitute check was not subject to a warranty claim (because it met the legal equivalence requirements and there was only one payment request) the paying bank's indemnity would be limited to the amount of the substitute check plus interest and expenses.

3. The amount of an indemnity would be reduced in proportion to the amount of any amount loss attributable to the indemnified person's negligence or bad faith. This comparative negligence standard is intended to allocate liability in the same manner as the comparative negligence provision of § 229.38(c).

4. An indemnifying bank may limit the losses for which it is responsible under § 229.53 by producing the original check or a sufficient copy. However, production of the original check or a sufficient copy does not absolve the indemnifying bank from liability claims relating to a warranty the bank has provided under § 229.52 or any other law, including but not limited to subpart C of this part or the U.C.C.

C. 229.53(c) Subrogation of Rights

1. A bank that pays an indemnity claim is subrogated to the rights of the person it indemnified, to the extent of the indemnity it provided, so that it may attempt to recover that amount from another person based on an indemnity, warranty, or other claim. The person that the bank indemnified must comply with reasonable requests from the indemnifying bank for assistance with respect to the subrogated claim.

Example.

A paying bank indemnifies a drawer for a substitute check that the drawer alleged was a forgery that would have been detected had the original check instead been presented. The bank that provided the indemnity could pursue its own indemnity claim against the bank that presented the substitute check, could attempt to recover from the forger, or could pursue any claim that it might have under other law. The bank also could request from the drawer any information that the drawer might possess regarding the possible identity of the forger.

XXXIII. § 229.54 Expedited Recredit for Consumers

A. 229.54(a) Circumstances Giving Rise to a Claim

1. A consumer may make a claim for expedited recredit under this section only for a substitute check that he or she has received and for which the bank charged his or her deposit account. As a result, checks used to access loans, such as credit card checks or home equity line of credit checks, that are reconverted to substitute checks would not give rise to an expedited recredit claim, unless such a check was returned unpaid and the bank charged the consumer's deposit account for the amount of the returned check. In addition, a consumer who received only a statement that contained images of multiple substitute checks per page would not be entitled to make an expedited recredit claim, although he or she could seek redress under other provisions of law, such as § 229.52 or U.C.C. 4–401. However, a consumer who originally received only a statement containing images of multiple substitute checks per page but later received a substitute check, such as in response to a request for a copy of a check shown in the statement, could bring a claim if the other expedited recredit criteria were met. Although a consumer must at some point have received a substitute check to make an expedited recredit claim, the consumer need not be in possession of the substitute check at the time he or she submits the claim.

2. A consumer must in good faith assert that the bank improperly charged the consumer's account for the substitute check or that the consumer has a warranty claim for the substitute check (or both). The warranty in question could be a substitute-check warranty described in § 229.52 or any other warranty that a bank provides with respect to a check under other law. A consumer could, for example, have a warranty claim under § 229.34[(b)]►(a) or (d)◄, which contains returned-check warranties that are made to the owner of the check.

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XXXVIII. Appendix C—Model Availability-Policy Disclosures, Clauses, and Notices; and Model Substitute-Check-Policy Disclosure and Notices

A. Introduction

1. Appendix C contains model disclosures, clauses, and notices that may be used by banks to meet their disclosure and notice responsibilities under the regulation. Banks using the models (except models C–[22]►18◄ through C–[25]►21◄) properly will be deemed in compliance with the regulation's disclosure requirements.

2. Information that must be inserted by a bank using the models is (italicized) within parentheses in the text of the models. Optional information►, and information the inclusion of which is dependent on a bank's policies and practices,◄ is enclosed in brackets.

3. Banks may make certain changes to the format or content of the models, including deleting material that is inapplicable, without losing the EFA Act's protection from liability for banks that use the forms properly. For example, if a bank does not have a cutoff hour prior to its closing time, or if a bank does not take advantage of the section 229.13 exceptions, it may delete the references to those provisions. Changes to the models may not be so extensive as to affect the substance, clarity, or meaningful sequence of the models. Acceptable changes include, for example—

a. Using "customer" and "bank" instead of pronouns

b. Changing the typeface or size►, although a materially smaller size may not meet the clear and conspicuous standard of section 229.15(a)◄

c. Incorporating certain state-law plain-English requirements

►4. a. Although banks are not required to use a certain paper size for their disclosures and notices, model funds-availability disclosures C–1, C–2, C–3A, C–3B, C–4A, and C–4B and notices C–9, C–10, C–11, C–12A, and C–12B are designed to be provided to customers on an 8½ x 11 inch sheet of paper. In addition, the following formatting techniques ensure that the information is readable:

i. A readable font style and font size

ii. Sufficient spacing between lines of the text

iii. Adequate spacing between paragraphs, as appropriate

iv. Sufficient white space and margins above, below and to the sides of the text

v. Sufficient contrast between the text and the background, such as black text on white paper

b. While the regulation does not require banks to use the above formatting techniques in presenting the information in these disclosures and notices, banks are encouraged to consider these techniques

when deciding how to disclose information. A bank that provides a disclosure or notice electronically to a customer comports with the models' formatting techniques by providing a disclosure or notice in a file format, such as the .pdf file format, that electronically represents an 8½ x 11 inch sheet of paper with black text and a white background.◄

►5◄[4]. Shorter time periods for availability may always be substituted for time periods used in the models.

►6◄[5]. Banks may also add related information. For example, a bank may [indicate that although funds have been made available to a customer and the customer has withdrawn them, the customer is still responsible for problems with the deposit, such as checks that were deposited being returned unpaid. Or a bank could] include a telephone number to be used if a customer has an inquiry regarding a deposit.

►7◄[6]. Banks are cautioned against using the models without reviewing their own policies and practices, as well as state and federal laws ►and regulations◄ regarding the time periods for availability of specific types of checks. A bank using the models will be in compliance with the EFA Act and the regulation only if the bank's disclosures correspond to its availability policy.

[7. Banks that have used earlier versions of the models (such as those models that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after deposit, or that did not address the cash-withdrawal limitation) are protected from civil liability under section 229.21(e). Banks are encouraged, however, to use current versions of the models when reordering or reprinting supplies.]

B. Model Availability-Policy and Substitute-Check-Policy Disclosures, Models C–1 through C–5[A]

1. Models C–1 Through C–5[A] Generally

a. Models C–1 through C–[5A]►4B◄ are models for the availability-policy disclosures described in section 229.16 and ►model C–5 is a model for the◄ substitute-check-policy disclosure described in section 229.57. The ►funds-availability◄ models accommodate a variety of availability policies, ranging from next-day availability to holds to statutory limits on all deposits. Model►s◄ C–3►A and C–3B◄ reflect[s] the additional disclosures discussed in section 229.16(b) and (c) for banks that have a policy of extending availability times on a case-by-case basis. ►All of the funds-availability models indicate that a bank's policy may provide that although funds have been made available to a customer and the customer has withdrawn them, the customer is still responsible for problems with the deposit, such as checks that were deposited being returned unpaid. (*See* § 229.19(c)(2) of the regulation.)◄

b. As already noted, there are several places in the forms where information must be inserted. This information includes the bank's cutoff times ►and◄[,] limitations relating to next-day availability[, and the first four digits of routing numbers for local banks]. In disclosing when funds will be available for withdrawal, ► a bank that makes funds available on the business day the deposit was received may describe the funds as being available "the same business day." A bank that makes funds available on a business day after the business day of receipt◄ [the bank] must insert [the] ►a cardinal number (1, 2, etc.),◄ ordinal number (such as first, second, etc.)►, or the word "next" to describe◄ [of] the business day after deposit that the funds will become available.

c. Models C–1 through C–[5A generally do not reflect any optional provisions of the regulation, or those that apply only to certain banks] ►4B reflect some information the inclusion of which depends on a bank's policies and practices, such as placing a hold on funds already on deposit when it cashes a check for a customer or makes funds immediately available to a customer (*see* § 229.19(e) of the regulation), and requiring special deposit slips as a condition for next-day availability for deposits of certain types of checks (*see* § 229.10(c)(2)). This information in the model availability-policy disclosures is placed within brackets to indicate that whether a bank should include the text in its availability-policy disclosure is dependent on the bank's funds-availability policies and practices. Additionally, certain other provisions of the regulation that apply only to certain banks are reflected◄ [Instead, disclosures for these provisions are included] in model[s C–6 through C–11A] ►clauses C–6, C–7, and C–8◄. A bank using one of the model availability-policy disclosures should also consider whether it must incorporate one or more of [models C–6 through C–11A.] ►these model clauses. A bank for which one or more of these clauses is applicable would append the clause(s) to the end of its availability-policy disclosure.◄

d. While section 229.10(b) of the regulation requires next-day availability for electronic payments, Treasury regulations (31 CFR 210) and ACH association rules require that preauthorized credits (direct deposits) be made available on the day the bank receives the funds. Models C–1 through [C–5] ►C–4B◄ reflect these rules. Wire transfers [, however,] ►and cash deposits◄ are not governed by Treasury or ACH rules, but banks generally make funds from [wire transfers] ►these types of deposits◄ available on the day received or on the business day following receipt. Banks should ensure that their disclosures reflect the availability given in most cases for [wire transfers.] ►these types of deposits. A bank that makes the proceeds of cash deposits or wire transfers available for withdrawal on the banking day they are received may specify in its disclosure that these types of deposits are available "the same business day" notwithstanding that the funds were not available at the opening of business on that day. Models C–1 through C–3B indicate that funds from these types of deposits will be available on the day received. A bank that uses one of these models should modify its disclosure to indicate that funds from cash deposits and wire transfers will be available on the next day if that reflects the bank's practice. In contrast, models C–4A and C–4B indicate that funds from cash deposits and wire transfers will be available on the business day following receipt. A bank that uses one of these models but that makes funds from cash deposits and wire transfers available the same day they are received—i.e., a bank that places holds to statutory limits only on check deposits—may modify the forms accordingly to reflect the bank's practice.◄

2. *Model C–1, Next-Day Availability.* A bank may use this model when its policy is to make funds from all ►check◄ deposits available [on the first] ►by the next◄ business day after a deposit is made. This model may also be used by banks that provide [immediate availability] ►same-day for check deposits◄ by substituting the [word "immediately"] ►phrase "the same business day"◄ in place of [on the first business day after the day we receive your deposit."] ►"the next business day."◄

3. *Model C–2, Next-Day Availability and Section 229.13. Exceptions.* A bank may use this model when its policy is to make funds from all ►check◄ deposits available to its customers [on the first] ►by the next◄ business day after the deposit is made, and to reserve the right to invoke the new-account and other exceptions in section 229.13. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of ►checks other than next-day-availability checks◄ [a nonlocal check].

4. *Model►s◄ C–3►A◄, Next-Day Availability, Case-by-Case Holds to Statutory Limits ►on Check Deposits Without Cash-Withdrawal Limitation◄, and Section 229.13 Exceptions►; and C–3B, Next-Day Availability, Case-by-Case Holds to Statutory Limits on Check Deposits With Cash-Withdrawal Limitation, and Section 229.13 Exceptions◄*

a. A bank may use [this model] ►these models◄ when its policy, in most cases, is to make funds from all types of deposits available ►by◄ the day after the deposit is made, but to delay availability on some ►check◄ deposits on a case-by-case basis up to the maximum time periods allowed under the regulation. A bank using [this model] ►these models◄ also reserves the right to invoke the exceptions listed in section 229.13. [A bank using this model also reserves the right to invoke the exceptions listed in section 229.13.] In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of ►checks other than next-day-availability checks◄ [a nonlocal check].

►b. Model availability-policy disclosure C–3A may be used by a bank that, when it delays availability of a check deposit on a case-by-case basis, does not impose the cash-withdrawal limitation permitted by section 229.12(b), whereas model availability-policy disclosure C–3B may be used by a bank that does impose this limitation when it delays availability on a case-by-case basis.

c. Models C–3A and C–3B include in brackets language related to check cashing, immediate availability, and holds on other

funds. A bank that bases its disclosure on model C–3A or C–3B would include this bracketed text in its disclosure only if the text corresponds to the bank's policy and practice. A bank that has such a policy, and that therefore includes this text in its disclosure, would include the text in the location indicated by the model. A bank that bases its availability-policy disclosure on model disclosure C–3A or C–3B and whose availability policy necessitates incorporation of one or more of the appendix's model clauses (C–9, C–11, or C–11A) would append those model clauses to the end of the second page of model C–3A or C–3B.◀

5. *Model*▶*s*◀ *C–4*▶*A*◀*, Holds to Statutory Limits on All Deposits* ▶*Without Cash-Withdrawal Limitation; and C–4B, Holds to Statutory Limits on All Deposits With Cash-Withdrawal Limitation*◀

▶a.◀ A bank may use [this model] ▶these models◀ when its policy is to [impose delays to the full extent] ▶delay availability as◀ allowed under section 229.12 and to reserve the right to invoke the section 229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of ▶checks other than next-day-availability◀ [a nonlocal check].

▶b. Model availability-policy disclosure C–4A may be used by a bank that delays availability as allowed under section 229.12 but does not impose the cash-withdrawal limitation permitted by section 229.12(b), whereas model availability-policy disclosure C–4B may be used by a bank that delays availability as allowed under section 229.12 and does impose the cash-withdrawal limitation permitted by section 229.12(b).

c. Models C–4A and C–4B include in brackets language related to check cashing, immediate availability, and holds on other funds. A bank that bases its disclosure on model C–4A or C–4B would include this bracketed text in its disclosure only if the text corresponds to the bank's policy and practice. A bank that has such a policy and that therefore includes this text in its disclosure would include the text in the location indicated by the model. A bank that bases its availability-policy disclosure on model disclosure C–4A or C–4B and whose availability policy necessitates incorporation of one or more of the appendix's model clauses (C–9, C–11, or C–11A) would append those model clauses to the end of the second page of model C–4A or C–4B.◀ [Model C–4 uses a chart to show the bank's availability policy for local and nonlocal checks, and model C–5 uses a narrative description.

6. Model C–5A bank may use this form when its policy is to impose delays to the full extent allowed by section 229.12 and to reserve the right to invoke the section 229.13 exceptions. In disclosing that a longer delay may apply, a bank may disclose when funds will generally be available based on when the funds would be available if the deposit were of a nonlocal check.]

7. *Model C–5*[A]▶*, Substitute-Check-Policy Disclosure*◀ A bank may use this form when it is providing the disclosure to its consumers required by section 229.57 explaining that a substitute check is the legal equivalent of an original check and the circumstances under which the consumer may make a claim for expedited recredit.

C. Model Clauses, Models C–6 through C–[11A]▶8◀

1. *Models C–6 through C-[11A]*▶*8*◀*. Generally.* Certain clauses like those in the models must be incorporated into a bank's availability-policy disclosure under certain circumstances. The commentary to each clause indicates when a clause similar to the model clause is required. ▶A bank for which one or more of these clauses is applicable would append the clause(s) to the end of its availability-policy disclosure.◀

[*2. Model C–6, Holds on Other Funds (Check Cashing)*

A bank that reserves the right to place a hold on funds already on deposit when it cashes a check for a customer, as addressed in section 229.19(e), must incorporate this type of clause in its availability-policy disclosure.

3. Model C–7, Holds on Other Funds (Other Account)

A bank that reserves the right to place a hold on funds in an account of the customer other than the account into which the deposit is made, as addressed in section 229.19(e), must incorporate this type of clause in its availability-policy disclosure.

4. Model C–8, Appendix B Availability (Nonlocal Checks)

A bank in a check-processing region where the availability schedules for certain nonlocal checks have been reduced, as described in appendix B of Regulation CC, must incorporate this type of clause in its availability-policy disclosure. Banks using model C–5 may insert this clause at the conclusion of the discussion titled "Nonlocal Checks."

5.] ▶2.◀ *Model C–*[*9*]▶*6*◀*, Automated Teller Machine Deposits (Extended Holds).* A bank that reserves the right to delay availability of deposits at nonproprietary ATMs until the ▶fourth◀[fifth] business day following the date of deposit, as permitted by section 229.12(▶b◀[f]), must incorporate this type of clause in its availability-policy disclosure. A bank must choose among the alternative language based on how it chooses to differentiate between proprietary and nonproprietary ATMs, as required under section 229.16(b)(5).

[*6. Model C–10, Cash-Withdrawal Limitation*

A bank that imposes cash-withdrawal limitations under section 229.12 must incorporate this type of clause in its availability-policy disclosure. Banks reserving the right to impose the cash-withdrawal limitation and using model C–3 should disclose that funds may not be available until the sixth (rather than fifth) business day in the first paragraph under the heading "Longer Delays May Apply."]

▶3◀[7]. *Model C–*[*11*]▶*7*◀*, Credit Union Interest-Payment Policy.* A credit union subject to the notice requirement of section 229.14(b)(2) must incorporate this type of clause in its availability-policy disclosure. This model clause is only an example of a hypothetical policy. Credit unions may follow any policy for accrual provided the method of accruing interest is the same for cash and check deposits.

▶4◀[8]. *Model C–*[*11A*]▶*8*◀*, Availability of Funds Deposited at Other Locations.* A clause similar to model C–[11A]▶8◀ should be used if a bank bases the availability of funds on the location where the funds are deposited [(for example, at a contractual or other branch located in a different check-processing region). Similarly, a clause similar to model C–[11A]▶8◀ should be used if a bank distinguishes between local and nonlocal checks (for example, a bank using model availability-policy disclosure C–4▶A◀ and C–[5]▶4B◀), and accepts deposits in more than one check-processing region].

D. Model Notices, Models C–[12]▶9◀ through C–[25]▶21◀

1. *Model Notices C–*[*12*]▶*9*◀ *through C–*[*25*]▶*21*◀ *Generally.* Models C–[12]▶9◀ through C–[25]▶21◀ provide models for the various notices required by the regulation. A bank that cashes a check and places a hold on funds in an account of the customer (see section 229.19(e)) should modify the model hold notice accordingly. For example, the bank could replace the word "deposit" with the word "transaction" and could add the phrase "or cashed" after the word "deposited."

2. *Model C–*[*12*]▶*9*◀*, Exception*[*–*] ▶*or Reasonable-Cause*◀ *Hold Notice.*

▶a. i.◀ This model satisfies the written notice required under section 229.13(g) when a bank places a hold based on a section 229.13 exception▶, including the reasonable-cause exception. The model notice includes a location, indicated by "(*reason for hold*)," in which the bank must insert the reason for placing the hold. The bulleted list below contains examples of reasons a bank may place a hold that could be inserted into the notice:

(1) A check you deposited was previously returned unpaid.

(2) You have overdrawn your account repeatedly in the last six months.

(3) The checks you deposited on this day exceeded $5,000.

(4) There is an emergency, such as a failure of computer or communications equipment.

(5) We believe a check you deposited will not be paid, because *(e.g., a reason from paragraph b).*

ii.◀If a hold is being placed on more than one check in a deposit, each check need not be described, but if different reasons apply, each reason must be indicated. A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank [must incorporate in the notice]▶may use◀ the material set out in brackets if it imposes overdraft or returned-check fees after invoking the reasonable-cause exception under section 229.13(e).

[3. *Model C–13,*]▶*b.*◀ *Reasonable-Cause Hold Notice.* [This]▶i. Model◀ notice ▶C–9 also◀ satisfies the written notice required under section 229.13(g) when a bank invokes the reasonable-cause exception under section 229.13(e). The [notice provides the bank with a list of] ▶model notice includes a location, indicated by "(*reason for hold*)," in which the bank would

insert the◄ specific reason[s that may be given] for invoking the exception. [If a hold is being placed on more than one check in a deposit, each check must be described separately, and if different reasons apply, each reason must be indicated. A bank may disclose its reason for doubting collectibility by checking the appropriate reason on the model. If the "Other" category is checked, the reason must be given.] ►The list below provides examples of reasons that a bank could insert into the notice as its reason for doubting collectability:

(1) We received notice that the check is being returned unpaid.

(2) We have confidential information that indicates that the check may not be paid.

(3) The check is drawn on an account with repeated overdrafts.

(4) We are unable to verify a signature on the back of the check.

(5) Some information on the check is not consistent with other information on the check.

(6) There are apparent alterations on the check.

(7) The routing number of the paying bank is not a current routing number.

(8) The check is postdated.

(9) The check has a stale date, that is, it was written too long ago and is expired.

(10) We have been notified that the check has been lost or damaged in collection.

ii. The above list is not intended to be comprehensive; another reason that does not appear in the list may be inserted in place of ("*reason for hold*") provided the reason satisfies the conditions for invoking the reasonable cause exception.

iii. If a hold is being placed on more than one check in a deposit, each check should be described separately, and if different reasons apply, each reason should be indicated.◄ A bank may use the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit. A bank [must incorporate in the notice]►may use◄ the material set out in brackets if it imposes overdraft or returned-check fees after invoking the reasonable-cause exception under section 229.13(e).

[4]►3◄. *Model C–[14]►10◄, One-Time Notice for Large-Deposit and Redeposited-Check Exception Holds.* This model satisfies the notice requirements of section 229.13(g)(2) concerning nonconsumer accounts.

[5]►4◄. *Model C–[15]►11◄, One-Time Notice for Repeated-Overdraft Exception Hold.* This model satisfies the notice requirements of section 229.13(g)(3).

[6]►5◄. *Model►s◄ C–[16]►12A◄, Case-by-Case Hold Notice ►Without Cash-Withdrawal Limitation; and C–*[16B]►*12B◄, Case-by-Case Hold Notice With Cash-Withdrawal Limitation.*◄ [This model] ►These models◄ satisfies the notice required under section 229.16(c)(2) when a bank with a case-by-case hold policy imposes a hold on a deposit. ►Model case-by-case hold notice C–12A may be used by a bank that imposes a case-by-case hold, but does not have a policy of imposing the cash-withdrawal limitation permitted by section 229.12(b), whereas model notice C–12B may be used by a bank that imposes such a hold and does have such a policy.

Section 229.16(c)(2)◄ [This notice] does not require a statement of the specific reason for the hold, as is the case when a section 229.13 exception hold is placed. A bank may specify the actual date when funds will be available for withdrawal rather than the number of the business day following the day of deposit when funds will be available. A bank must incorporate in the notice the material set out in brackets if it imposes overdraft fees after invoking a case-by-case hold.

[7]►6◄. *Model C–[17]►13◄, Notice at Locations Where Employees Accept Consumer Deposits►;◄[,] and Model C–[18]►14◄, Notice at Locations Where Employees Accept Consumer Deposits (Case-by-Case Holds)*

►a.◄ These models satisfy the notice requirement of section 229.18(b). Model C–[17]►13◄ reflects an availability policy of holds to statutory limits on all deposits, and model C–[18]►14◄ reflects a case-by-case availability policy.

►b. i. Model C–13 indicates that funds from cash deposits and wire transfers will be available on the business day following receipt. A bank that uses this model but that makes funds from these types of deposits available the same day they are received—*i.e.,* a bank that places holds to statutory limits only on check deposits—may modify the form accordingly to reflect the bank's practice. In contrast, model C–14 indicates that funds from cash deposits and wire transfers will be available on the day received. A bank that uses this model should modify its disclosure to indicate that funds from these types of deposits will be available on the next day if that reflects the bank's practice. A bank should ensure that its notice reflects the availability given in most cases for these types of deposits.

ii. A bank that imposes cash-withdrawal limitations under section 229.12(b) should indicate that funds will generally be available by the third, rather than second, business day after the day of deposit, by replacing "(*number*)" in the lower-right-hand box of the tables in the models with "third" (rather than second).◄

[8]►7◄. *Model C–[19]►15◄, Notice at Automated Teller Machines►.◄* This model satisfies the ATM notice requirement of section 229.18(c)(1).

[9]►8◄. *Model C–[20]►16◄, Notice at Automated Teller Machines (Delayed Receipt)►.◄* This model satisfies the ATM notice requirement of section 229.18(c)(2) when receipt of deposits at off-premises ATMs is delayed under section 229.19(a)(4). It is based on collection of deposits once a week. If collections occur more or less frequently, the description of when deposits are received must be adjusted accordingly.

[10]►9◄. *Model C–[21]►22◄, Deposit-Slip Notice►.◄* This model satisfies the notice requirements of section 229.18(a) for deposit slips.

[11]►10◄. *Models C–[22]►18◄ Through C–[25]►21◄ Generally►.◄* Models C–[22]►18◄ through C–[25]►21◄ provide models for the various notices required when a consumer who receives substitute checks makes an expedited recredit claim under section 229.54 for a loss related to a substitute check. The Check 21 Act does not provide banks that use these models with a safe harbor. However, the Board has published these models to aid banks' efforts to comply with section 229.54(e).

[12]►11◄. *Model C–[22]►18◄, Valid-Claim Refund Notice►.◄* A bank may use this model when crediting the entire amount or the remaining amount of a consumer's expedited-recredit claim after determining that the consumer's claim is valid. This notice could be used when the bank provides the consumer a full recredit based on a valid-claim determination within ten days of the receipt of the consumer's claim or when the bank recredits the remaining amount of a consumer's expedited-recredit claim by the 45th calendar day after receiving the consumer's claim, as required under section 229.54(e)(1).

[13]►12◄. *Model C–[23]►19◄, Provisional-Refund Notice►.◄* A bank may use this model when providing a full or partial expedited recredit to a consumer pending further investigation of the consumer's claim, as required under section 229.54(e)(1).

[14]►13◄. *Model C–[24]►20◄, Denial Notice►.◄* A bank may use this model when denying a claim for an expedited recredit under section 229.54(e)(2).

[15]►14◄. *Model C–[25]►21◄, Reversal Notice►.◄* A bank may use this model when reversing an expedited recredit that was credited to a consumer's account under section 229.54(e)(3).

37. Revise Appendix F to Part 229 to read as follows:

►Appendix F to Part 229—Official Board Interpretations; Preemption Determinations

Uniform Commercial Code, Section 4–213(5)

1. State provision that may supersede Regulation CC

Section 4–213(5) of the Uniform Commercial Code ("U.C.C.") provides that money deposited in a bank is available for withdrawal as of right at the opening of business of the banking day after deposit. Although the language "deposited in a bank" is unclear, arguably it is broader than the language "made in person to an employee of the depositary bank," which conditions the next-day availability of cash under Regulation CC (§ 229.10(a)(1)). Under Regulation CC, deposits of cash that are not made in person to an employee of the depositary bank must be made available by the second business day after the banking day of deposit (§ 229.10(a)(2)). Therefore, this provision of the U.C.C. may call for the availability of certain cash deposits in a shorter time than provided in Regulation CC. To the extent that section 4–213(5) of the U.C.C. requires certain cash deposits in a shorter time than provided in Regulation CC, that section supersedes Regulation CC.

2. State provision superseded by Regulation CC

Section 4–213(5) of the U.C.C., however, is subject to Section 4–103(1), which provides,

in part, that "the effect of the provisions of this Article may be varied by agreement * * *." The Regulation CC funds availability requirements may not be varied by agreement. Therefore, a depositary bank may agree to extend availability beyond the requirement of section 4–213(5), but may not agree with its customer under section 4–103(1) of the Code to extend availability beyond the time periods provided in § 229.10(a) of Regulation CC.

Other preemption determinations

California

California has three separate sets of regulations establishing maximum availability schedules, all adopted pursuant to California Financial Code section 866.5 (which requires the banking commissioners to promulgate regulations establishing a reasonable period of time within which a depository institution must make deposited funds available to customers) and California Commercial Code section 4–213(4)(a), that were in effect on or before September 1, 1989. The regulations applicable to commercial banks and branches of foreign banks (collectively, *banks*) located in California (Cal. Admin. Code tit. 10, §§ 10.190401–10.190402) were promulgated by the superintendent of banks. The regulations applicable to savings banks and savings and loan associations (collectively, *savings institutions*) (Cal. Admin. Code tit. 10, §§ 106.200–106.202) were promulgated by the savings and loan commissioner. The regulations applicable to industrial loan companies (Cal. Admin. Code tit. 10, § 40.101) were promulgated by the Commissioner of Corporations. California Financial Code section 867 also establishes availability periods for funds deposited by cashier's check, certified check, teller's check, or depository check under certain circumstances. Finally, California Financial Code section 866.2 establishes disclosure requirements.

1. Funds availability periods

A. Banks and savings institutions.

The regulations applicable to California banks and savings institutions provide that a depositary bank shall make funds deposited into a deposit account available for withdrawal as provided in Regulation CC, subject to the following:

Cashier's checks, teller's checks, certified checks, or depository checks. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state's second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement provides for holds of the same number of days as the federal schedules and therefore supersedes the federal schedules if the California regulations do not allow the funds to be made available later in the day than does Regulation CC.

Checks drawn on in-state bank with a different four-digit routing symbol. California regulations require banks (not including savings institutions) to provide fourth business day availability of funds deposited into a bank with a four-digit routing symbol of 1210 ("1210 bank") by a check drawn on an in-state bank with a four-digit routing symbol of 1220 ("1220 bank"). Similarly, a 1220 bank that receives a check drawn on a 1210, in-state bank may make the funds available for withdrawal by the fourth business day after the day of deposit. Regulation CC, however, provides that checks must be made available for withdrawal by the second business day after the banking day of deposit. Because California's regulations permit depositary banks to make funds available within a longer period of time than the federal schedules, California's regulations are superseded by the EFA Act and subpart B of Regulation CC.

Paying bank. The California regulation uses the term *paying bank* when describing the institution on which these checks are drawn, but does not define *paying bank* or *bank.* Regulation CC's definitions of *paying bank* and *bank* include savings institutions and credit unions as well as commercial banks and branches of foreign banks. However, because the California regulation makes separate provisions for checks drawn on savings institutions and credit unions, the Board concludes that the term *paying bank,* as used in the California regulation, includes only commercial banks and foreign bank branches.

Exceptions to the availability schedules. Under the state preemption standards of Regulation CC (see § 229.20(c) and accompanying Commentary), for deposits subject to the state availability schedules, a state exception may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. If no state exceptions exist, then no exceptions holds may be placed on deposits covered by state schedules. Thus, to the extent that California law provides for exceptions to the California schedules that supersede Regulation CC, those exceptions may be applied in order to extend the state availability schedules up to the federal availability schedules or such later time as is permitted by a federal exception.

B. Industrial loan companies.

Section 229.2(e)(1)(i) of Regulation CC, the term *bank* includes an insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813). That Act defines *bank* to include any State bank (12 U.S.C. 1813(a)(1)(A)) and, in turn, defines *State bank* to include an industrial bank or similar depository institution that receives deposits and is incorporated under the laws of any state (12 U.S.C. 1813(a)(2)). The California regulations applicable to industrial loan companies set forth a funds availability schedule that does not incorporate the periods set forth in Regulation CC. Accordingly, the following preemption determination sets forth the provisions of state law that supersede federal law and those that are preempted by it.

Check of $100 or less. California regulations require industrial loan companies to give next-day availability to a check of $100 or less. Therefore, the California provision supersedes the Regulation CC provision if on a single banking day multiple checks, each under $100, are deposited.

U.S. Treasury, state and local government checks. California regulations require industrial loan companies to give next-day availability to items drawn by the State of California or any of its departments, agencies, or political subdivisions. Regulation CC conditions next-day availability on receipt of the deposit at a staffed teller station or use of a special deposit slip. Therefore, California law supersedes the federal law in that the state law does not condition next-day availability on receipt at a staffed teller station or use of a special deposit slip.

On-us checks. California regulations require industrial loan companies to provide second business day availability to checks drawn on the depositary bank. Regulation CC requires next-day availability for checks deposited in a branch of the depositary bank and drawn on the same or another branch of the same bank. Thus, generally, the Regulation CC rule for availability of on-us checks preempts the California regulations. To the extent, however, that an on-us check is deposited at an off-premises ATM or another facility of the depositary bank that is not considered a branch under federal law, the state regulation supersedes the Regulation CC availability requirements.

Cashier's checks, teller's checks, certified checks, or depository checks. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement provides for holds of the same number of days as the federal schedules and therefore supersedes the federal local and nonlocal schedules if the California regulations do not allow the funds to be made available later in the day than does Regulation CC.

In-state and out-of-state checks. California regulations require industrial loan companies to make funds deposited by a check drawn on a depository institution in California available no later than the sixth business day after deposit. Industrial loan companies are required to make funds deposited by a check drawn on a depository institution outside of California available no later than the twelfth business day after deposit. Regulation CC, however, generally requires depositary banks to make funds deposited by a check drawn on any depository bank available no later

than the second business day after deposit. Accordingly, California's regulation permitting longer holds by industrial loan companies is preempted by Regulation CC.

Exceptions to the availability schedules. California regulations provide exceptions to the state availability schedules applicable to industrial loan companies for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions. In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. For deposits that are covered by the state's availability schedule (*e.g.,* cashier's or teller's checks that are not deposited with a special deposit slip or at a staff teller station and on-us checks deposited at an off-premises ATM or another facility of the depositary bank that is not considered a branch under federal law), the state exceptions may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability limit under a state exception, the depositary bank may further extend the hold under any federal exception that can be applied to the deposit. Any time a depositary bank invokes an exception to extend a hold beyond the time periods otherwise permitted by law, it must give notice of the extended hold to its customer in accordance with § 229.13(g) of Regulation CC.

2. Disclosures

California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures concerning funds availability relating to accounts. California Financial Code § 866.2 requires disclosures that differ from those required by Regulation CC and, therefore, is preempted to the extent that it applies to *accounts* as defined in Regulation CC. Thus, the state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

The Department of Savings and Loan regulations provide that for those non-transaction accounts covered by state law but not by federal law, disclosures in accordance with Regulation CC will be deemed to comply with the state law disclosure requirements. To the extent that the Department of Savings and Loan regulations permit reliance on Regulation CC disclosures for transaction accounts and to the extent the state regulations survive the preemption of California Financial Code § 866.2, they are not preempted by, nor do they supersede, the federal law. The state law continues to apply to savings accounts and other non-transaction accounts not governed by Regulation CC disclosure requirements.

3. Other general provisions

Accounts. The California funds availability laws and regulations apply to accounts as defined by Regulation CC as well as savings accounts, as defined in the Board's Regulation D (12 CFR 204.2(d)), negotiable order of withdrawal draft accounts, share draft accounts and other share accounts (other than time accounts). (California Financial Code section 886(b)) The funds availability schedules in Regulation CC apply only to *accounts* as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability regulations continue to apply to deposits in savings and other accounts (such as accounts in which the account-holder is another bank) that are not *accounts* under Regulation CC. Under § 229.19(e) of Regulation CC (*Holds on other funds*), however, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC in certain circumstances.

Business day/banking day. The definitions of *business day* and *banking day* in the California regulations are preempted by the Regulation CC definition of those terms. Thus, for determining whether the permissible hold under the California schedules supersedes the Regulation CC schedule, deposits are considered made on the specified number of *business days* following the *banking day* of deposit.

Availability at start of day. The California regulations do not specify when during the day funds must be made available for withdrawal. Section 229.19(b) of Regulation CC provides that funds must be made available at the start of the business day. In those cases where federal and state law provide for holds for the same number of days, to the extent that the California regulations allow funds to be made available later in the day than does Regulation CC, the federal law would preempt state law.

Checks. The California law applies to any *Item* (California Financial Code section 866.5 and California Commercial Code section 4213(4)(a)). The California Commercial Code defines *item* to mean *any instrument for the payment of money even though it is not negotiable* * * * (Cal. Com. Code section 4104(g)). This term is broader in scope than the definition of *check* in the Act and Regulation CC. All of the regulations, however, define the term *item* to include checks, negotiable orders of withdrawal, share drafts, warrants, and money orders. As limited by the state regulations, the state law applies only to instruments that are also *checks* as defined in § 229.2(k) of Regulation CC.

Illinois

Section 4–213(5) of the U.C.C. as adopted in Illinois (Illinois Revised Statutes Chapter 26, paragraph 4–213(5), enacted July 26, 1988) provides that funds from deposits must be available in accordance with the provisions of the federal Expedited Funds Availability Act (Title VI of the Competitive Equality Banking Act of 1987) and the regulations promulgated by the Federal Reserve Board for the implementation of that Act. Therefore, Section 4–213(5) of the Illinois law does not supersede Regulation CC; and, because this provision of Illinois law does not permit funds to be made available for withdrawal in a longer period of time than required under the Act and Regulation, it is not preempted by Regulation CC.

Maine

Maine's funds availability (Title 9–B MRSA section 241(5), adopted in 1985) requires Maine financial institutions to make funds deposited in a transaction account, savings account, or time account available for withdrawal within a reasonable period. The Maine statute gives the Superintendent of Banking for the State of Maine the authority to promulgate rules setting forth time limitations and disclosure requirements governing funds availability. Under the Superintendent of Banking's regulations, effective July 1, 1987 (Regulation 18(IV)), and adopted amendments to this regulation, effective September 1, 1988, funds deposited to any deposit account in a Maine financial institution must be made available for withdrawal in accordance with the Act and Regulation CC (Regulation 18–IV(A)(1), 02–029–118 Me. Code. R. § IV). The state regulation provides that an institution's funds availability policies for accounts subject to Regulation CC be disclosed in a manner consistent with the Regulation CC requirements. Funds availability policies for accounts not subject to Regulation CC must be disclosed in accordance with the state regulation (Regulation 18–IV(A)(2)).

Funds availability and disclosures. The Maine regulation incorporates the Regulation CC availability and disclosure requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the Maine regulation is not preempted by, nor does it supersede, the federal law.

Accounts. The Maine funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts, as defined in the Board's Regulation D (12 CFR 204.2(d)). The funds availability schedules in Regulation CC apply only to *accounts* as defined in Regulation CC, which generally consist of transaction accounts. The Maine funds availability law and regulations continue to apply to deposits in all accounts, including those that are not *accounts* under Regulation CC. Under § 229.19(e) of Regulation CC (*Holds on other funds*), however, the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC in certain circumstances.

Massachusetts

In 1988, Massachusetts amended its statute governing funds availability (Mass. Gen. L. ch. 167D, section 35).

1. Funds availability periods

Massachusetts requires banking institutions to make funds available for withdrawal in accordance with the EFA Act and Regulation CC. Massachusetts defines *local originating depository institution* (local paying bank in Regulation CC terminology) as a depository institution located in Massachusetts (as distinguished from a depository institution located in the same

check-processing region—the terminology the EFA Act uses). Regulation CC no longer distinguishes between "local" and "nonlocal" originating depository institutions, and therefore, the term "local originating depository institution" is no longer relevant for purposes of funds availability. Because the Massachusetts statute incorporates the Regulation CC availability requirements, the state requirements are consistent with the federal requirements, and the Massachusetts statute is not preempted by, nor does it supersede, the federal law.

2. Disclosures

The Massachusetts regulation incorporates the Regulation CC disclosure requirements with respect to both accounts covered by Regulation CC and savings and other accounts not governed by the federal regulation. Because the state requirements are consistent with the federal requirements, the Massachusetts regulation is not preempted by, nor does it supersede, the federal law. The Massachusetts disclosure rules would continue to apply to accounts not governed by the Regulation CC disclosure requirements.

3. Other general provisions

Accounts. The Massachusetts statute governs the availability of funds deposited in "any demand deposit, negotiable order of withdrawal account, savings deposit, share account or other asset account." Regulation CC applies only to *accounts* as defined in § 229.2(a). Regulation CC does not affect the Massachusetts statute to the extent that the state law applies to deposits in savings and other accounts (including transaction accounts where the account holder is a bank, foreign bank, or the U.S. Treasury) that are not *accounts* under Regulation CC. Under § 229.19(e) of Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC, in certain circumstances.

New York

In 1983, the New York State Banking Department, pursuant to section 14–d of the New York Banking law, issued regulations requiring that funds deposited in an account be made available for withdrawal within specified time periods, and provided certain exceptions to those availability schedules. Part 34 of the New York State Banking Department's General Regulations established time frames within which commercial banks, trust companies, and branches of foreign banks (collectively, *banks*); and savings banks, savings and loan associations, and credit unions (collectively, *savings institutions*) must make funds deposited in customer accounts available for withdrawal.

1. Funds availability periods

The Banking Department amended part 34, effective September 1, 1988, generally to exclude accounts covered by Regulation CC from the scope of the state regulation, except for deposits drawn on non-local, but in-state, banks. The New York schedule for banks and savings institutions permits maximum holds on funds deposited by checks drawn on a nonlocal, but in state, bank or savings institution ranging from no later than the fourth business day (in the case of banks) to no later than the fifth business day (in the case of savings institutions). Because Regulation CC requires funds to be made available no later than the second business day (unless an exception applies, as discussed below), Regulation CC preempts the New York schedule for funds availability.

Exceptions to the availability schedules. New York law provides exceptions to the state availability schedules for large deposits, new accounts, repeated overdrafters, doubtful collectibility, foreign items, and emergency conditions (part 34.5, renumbered from 34.4). In all cases where the federal availability schedule preempts the state schedule, only the federal exceptions will apply. Because the federal availability schedule preempts the state schedule for all cases, the New York exceptions do not apply.

2. Disclosures

The revised New York regulation does not contain funds availability disclosure requirements applicable to accounts subject to Regulation CC.

3. Other provisions

Accounts. The New York statute governs the availability of funds deposited in savings accounts and time deposits, as well as *accounts* as defined in § 229.2(a) of Regulation CC. Regulation CC applies only to *accounts* as defined in § 229.2(a). Regulation CC does not affect the New York statute to the extent that the state law applies to deposits in savings accounts and time deposits, which are not *accounts* under Regulation CC. Under § 229.19(e) of Regulation CC, *Holds on other funds,* the federal availability schedules may apply to savings, time, and other accounts not defined as *accounts* under Regulation CC, in certain circumstances.

Items. The New York law and regulation apply to items deposited to accounts. Part 34.3(e) defines *item as a check, negotiable order of withdrawal or money order deposited into an account.* The Board interprets the definition of *item* in New York law to be consistent with the definition of *check* in Regulation CC (§ 229.2(k)).

By order of the Board of Governors of the Federal Reserve System, March 3, 2011.

Robert deV Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–5449 Filed 3–24–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL REGISTER

Vol. 76 Friday,

No. 58 March 25, 2011

Part III

Equal Employment Opportunity Commission

29 CFR Part 1630

Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act, as Amended; Final Rule

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1630

RIN 3046–AA85

Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act, as Amended

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Final Rule.

SUMMARY: The Equal Employment Opportunity Commission (the Commission or the EEOC) issues its final revised Americans with Disabilities Act (ADA) regulations and accompanying interpretive guidance in order to implement the ADA Amendments Act of 2008. The Commission is responsible for enforcement of title I of the ADA, as amended, which prohibits employment discrimination on the basis of disability. Pursuant to the ADA Amendments Act of 2008, the EEOC is expressly granted the authority to amend these regulations, and is expected to do so.

DATES: *Effective Date:* These final regulations will become effective on May 24, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher J. Kuczynski, Assistant Legal Counsel, or Jeanne Goldberg, Senior Attorney Advisor, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission at (202) 663–4638 (voice) or (202) 663–7026 (TTY). These are not toll-free-telephone numbers. This document is also available in the following formats: Large print, Braille, audio tape, and electronic file on computer disk. Requests for this document in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY) or to the Publications Information Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION:

Introduction

The ADA Amendments Act of 2008 (the Amendments Act) was signed into law by President George W. Bush on September 25, 2008, with a statutory effective date of January 1, 2009. Pursuant to the Amendments Act, the definition of disability under the ADA, 42 U.S.C. 12101, *et seq.,* shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the ADA as amended, and the determination of whether an individual has a disability should not demand extensive analysis. The Amendments Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of the EEOC's ADA regulations. The effect of these changes is to make it easier for an individual *see*king protection under the ADA to establish that he or she has a disability within the meaning of the ADA. Statement of the Managers to Accompany S. 3406, The Americans with Disabilities Act Amendments Act of 2008 (2008 Senate Statement of Managers); Committee on Education and Labor Report together with Minority Views (to accompany H.R. 3195), H.R. Rep. No. 110–730 part 1, 110th Cong., 2d Sess. (June 23, 2008) (2008 House Comm. on Educ. and Labor Report); Committee on the Judiciary Report together with Additional Views (to accompany H.R. 3195), H.R. Rep. No. 110–730 part 2, 110th Cong., 2d Sess. (June 23, 2008) (2008 House Judiciary Committee Report).

The Amendments Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways, therefore necessitating revision of the prior regulations and interpretive guidance contained in the accompanying "Appendix to Part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act," which are published at 29 CFR part 1630 (the appendix).

Consistent with the provisions of the Amendments Act and Congress's expressed expectation therein, the Commission drafted a Notice of Proposed Rulemaking (NPRM) that was circulated to the Office of Management and Budget for review (pursuant to Executive Order 12866) and to federal executive branch agencies for comment (pursuant to Executive Order 12067). The NPRM was subsequently published in the **Federal Register** on September 23, 2009 (74 FR 48431), for a sixty-day public comment period. The NPRM sought comment on the proposed regulations, which:

—Provided that the definition of "disability" shall be interpreted broadly;

—Revised that portion of the regulations defining the term "substantially limits" as directed in the Amendments Act by providing that a limitation need not "significantly" or "severely" restrict a major life activity in order to meet the standard, and by deleting reference to the terms "condition, manner, or duration" under which a major life activity is performed, in order to effectuate Congress's clear instruction that "substantially limits" is not to be misconstrued to require the "level of limitation, and the intensity of focus" applied by the Supreme Court in *Toyota Motor Mfg., Ky., Inc.* v. *Williams,* 534 U.S. 184 (2002) (2008 Senate Statement of Managers at 6);

—Expanded the definition of "major life activities" through two non-exhaustive lists:

—The first list included activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working, some of which the EEOC previously identified in regulations and sub-regulatory guidance, and some of which Congress additionally included in the Amendments Act;

—The second list included major bodily functions, such as functions of the immune system, special sense organs, and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions, many of which were included by Congress in the Amendments Act, and some of which were added by the Commission as further illustrative examples;

—Provided that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a "disability";

—Provided that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;

—Provided that the definition of "regarded as" be changed so that it would no longer require a showing that an employer perceived the individual to be substantially limited in a major life activity, and so that an applicant or employee who is subjected to an action prohibited by the ADA (e.g., failure to hire, denial of promotion, or termination) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is both "transitory and minor";

—Provided that actions based on an impairment include actions based on

symptoms of, or mitigating measures used for, an impairment;

—Provided that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation; and,

—Provided that qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision shall not be used unless shown to be job related for the position in question and consistent with business necessity.

To effectuate these changes, the NPRM proposed revisions to the following sections of 29 CFR part 1630 and the accompanying provisions of the appendix: § 1630.1 (added (c)(3) and (4)); § 1630.2(g)(3) (added cross-reference to 1630.2(l)); § 1630.2 (h) (replaced the term "mental retardation" with the term "intellectual disability"); § 1630.2(i) (revised definition of "major life activities" and provided examples); § 1630.2(j) (revised definition of "substantially limits" and provided examples); § 1630.2(k) (provided examples of "record of" a disability); § 1630.2(l) (revised definition of "regarded as" having a disability and provided examples); § 1630.2(m) (revised terminology); § 1630.2(o) (added (o)(4) stating that reasonable accommodations are not available to individuals who are only "regarded as" individuals with disabilities); § 1630.4 (renumbered section and added § 1630.4(b) regarding "claims of no disability"); § 1630.9 (revised terminology in § 1630.9(c) and added § 1630.9(e) stating that an individual covered only under the "regarded as" definition of disability is not entitled to reasonable accommodation); § 1630.10 (revised to add provision on qualification standards and tests related to uncorrected vision); and § 1630.16(a) (revised terminology).

These regulatory revisions were explained in the proposed revised part 1630 appendix containing the interpretive guidance. The Commission originally issued the interpretive guidance concurrent with the original part 1630 ADA regulations in order to ensure that individuals with disabilities understand their rights under these regulations and to facilitate and encourage compliance by covered entities. The appendix addresses the major provisions of the regulations and explains the major concepts. The appendix as revised will be issued and published in the *Code of Federal Regulations* with the final regulations. It will continue to represent the Commission's interpretation of the issues discussed in the regulations, and the Commission will be guided by it when resolving charges of employment discrimination under the ADA.

Summary and Response to Comments

The Commission received well over 600 public comments on the NPRM, including, among others: 5 comments from federal agencies that had not previously commented during the inter-agency review process under E.O. 12067 or the Office of Management and Budget review process under E.O. 12866; 61 comments from civil rights groups, disability rights groups, health care provider groups, and attorneys, attorney associations, and law firms on their behalf; 48 comments from employer associations and industry groups, as well as attorneys, attorney associations, and law firms on their behalf; 4 comments from state governments, agencies, or commissions, including one from a state legislator; and 536 comments from individuals, including individuals with disabilities and their family members or other advocates. Each of these comments was reviewed and considered in the preparation of this final rule. The Commission exercised its discretion to consider untimely comments that were received by December 15, 2009, three weeks following the close of the comment period, and these tallies include 8 such comments that were received. The comments from individuals included 454 comments that contained similar or identical content filed by or on behalf of individuals with learning disabilities and/or attention-deficit/hyperactivity disorder (AD/HD), although many of these comments also included an additional discussion of individual experiences.

Consistent with EO 13563, this rule was developed through a process that involved public participation. The proposed regulations, including the preliminary regulatory impact and regulatory flexibility analyses, were available on the Internet for a 60-day public-comment period, and during that time the Commission also held a series of forums in order to promote the open exchange of information. Specifically, the EEOC and the U.S. Department of Justice Civil Rights Division also held four "Town Hall Listening Sessions" in Oakland, California on October 26, 2009; in Philadelphia, Pennsylvania on October 30, 2009, in Chicago, Illinois on November 17, 2009, and in New Orleans, Louisiana on November 20, 2009. During these sessions, Commissioners heard in-person and telephonic comments on the NPRM from members of the public on both a pre-registration and walk-in basis. More than 60 individuals and representatives of the business/employer community and the disability advocacy community from across the country offered comments at these four sessions, a number of whom additionally submitted written comments.

All of the comments on the NPRM received electronically or in hard copy during the public comment period, including comments from the Town Hall Listening Sessions, may be reviewed at the United States Government's electronic docket system, *http://www.regulations.gov,* under docket number EEOC–2009–0012. In most instances, this preamble addresses the comments by issue rather than by referring to specific commenters or comments by name.

In general, informed by questions raised in the public comments, the Commission throughout the final regulations has refined language used in the NPRM to clarify its intended meaning, and has also streamlined the organization of the regulation to make it simpler to understand. As part of these revisions, many examples were moved to the appendix from the regulations, and NPRM language repeatedly stating that no negative implications should be drawn from the citation to particular impairments in the regulations and appendix was deleted as superfluous, given that the language used makes clear that impairments are referenced merely as examples. More significant or specific substantive revisions are reviewed below, by provision.

The Commission declines to make changes requested by some commenters to portions of the regulations and the appendix that we consider to be unaffected by the ADA Amendments Act of 2008, such as to 29 CFR 630.3 (exceptions to definitions), 29 CFR 1630.2(r) (concerning the "direct threat" defense), 29 CFR 1630.8 (association with an individual with a disability), and portions of the appendix that discuss the obligations of employers and individuals during the interactive process following a request for reasonable accommodation. The Commission has also declined to make revisions requested by commenters relating to health insurance, disability and other benefit programs, and the interaction of the ADA, the Family and Medical Leave Act (FMLA), and workers' compensation laws. The Commission believes the proposed regulatory language was clear with respect to any application it may have to these issues.

Terminology

The Commission has made changes to some of the terminology used in the final regulations and the appendix. For example, an organization that represents individuals who have HIV and AIDS asked that the regulations refer to "HIV infection," instead of "HIV and AIDS." An organization representing persons with epilepsy sought deletion or clarification of references to "seizure disorders" and "seizure disorders other than epilepsy," noting that "people who have chronic seizures have epilepsy, unless the seizure is due to [another underlying impairment]." This revision was not necessary since revisions to the regulations resulted in deletion of NPRM § 1630.2(j)(5)(iii) in which the reference to "seizure disorder" appeared. In addition, the Commission made further revisions to conform the regulations and appendix to the statutory deletion of the term "qualified individual with a disability" throughout most of title I of the ADA. The Commission did not make all changes in terminology suggested by commenters, for example declining to substitute the term "challenges" for the terms "disability" and "impairment," because this would have been contrary to the well-established terminology that Congress deliberately used in the ADA Amendments Act.

Section 1630.2(g): Disability

This section of the regulations includes the basic three-part definition of the term "disability" that was preserved but redefined in the ADA Amendments Act. For clarity, the Commission has referred to the first prong as "actual disability," to distinguish it from the second prong ("record of") and the third prong ("regarded as"). The term "actual disability" is used as short-hand terminology to refer to an impairment that substantially limits a major life activity within the meaning of the first prong of the definition of disability. The terminology selected is for ease of reference and is not intended to suggest that individuals with a disability under the first prong otherwise have any greater rights under the ADA than individuals whose impairments are covered under the "record of" or "regarded as" prongs, other than the restriction created by the Amendments Act that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation.

Although an individual may be covered under one or more of these three prongs of the definition, it appeared from comments that the NPRM did not make explicit enough that the "regarded as" prong should be the primary means of establishing coverage in ADA cases that do not involve reasonable accommodation, and that consideration of coverage under the first and second prongs will generally not be necessary except in situations where an individual needs a reasonable accommodation. Accordingly, in the final regulations, § 1630.2(g) and (j) and their accompanying interpretive guidance specifically state that cases in which an applicant or employee does not require reasonable accommodation can be evaluated solely under the "regarded as" prong of the definition of "disability."

Section 1630.2(h): Impairment

Some comments pointed out that the list of body systems in the definition of "impairment" in § 1630.2(h) of the NPRM was not consistent with the description of "major bodily functions" in § 1630.2(i)(1)(ii) that was added due to the inclusion in the Amendments Act of "major bodily functions" as major life activities. In response, the Commission has added references to the immune system and the circulatory system to § 1630.2(h), because both are mentioned in the definition of "major bodily functions" in § 1630.2(i)(1)(ii). Other apparent discrepancies between the definition of "impairment" and the list of "major bodily functions" can be accounted for by the fact that major bodily functions are sometimes defined in terms of the operation of an organ within a body system. For example, functions of the brain (identified in § 1630.2(i)) are part of the neurological system and may affect other body systems as well. The bladder, which is part of the genitourinary system, is already referenced in § 1630.2(h). In response to comments, the Commission has also made clear that the list of body systems in § 1630.2(h)(1) is non-exhaustive, just as the list of mental impairments in § 1630.2(h)(2) has always made clear with respect to its examples. The Commission has also amended the final appendix to § 1630.2(h) to conform to these revisions.

The Commission received several comments seeking explanation of whether pregnancy-related impairments may be disabilities. To respond to these inquiries, the final appendix states that although pregnancy itself is not an impairment, and therefore is not a disability, a pregnancy-related impairment that substantially limits a major life activity is a disability under the first prong of the definition. Alternatively, a pregnancy-related impairment may constitute a "record of" a substantially limiting impairment, or may be covered under the "regarded as" prong if it is the basis for a prohibited employment action and is not "transitory and minor."

Section 1630.2(i): Major Life Activities

A number of comments, mostly on behalf of individuals with disabilities, suggested that the Commission add more examples of major life activities, particularly to the first non-exhaustive list, including but not limited to typing, keyboarding, writing, driving, engaging in sexual relations, and applying fine motor coordination. Other suggestions ranged widely, including everything from squatting and getting around inside the home to activities such as farming, ranching, composting, operating water craft, and maintaining an independent septic tank.

The Commission does not believe that it is necessary to decide whether each of the many other suggested examples is in fact a major life activity, but we emphasize again that the statutory and regulatory examples are non-exhaustive. We also note that some of the activities that commenters asked to be added may be part of listed major life activities, or may be unnecessary to establishing that someone is an individual with a disability in light of other changes to the definition of "disability" resulting from the Amendments Act.

Some employer groups suggested that major life activities other than those specifically listed in the statute be deleted, claiming that the EEOC had exceeded its authority by including additional ones. Specific concerns were raised about the inclusion of "interacting with others" on behalf of employers who believed that recognizing this major life activity would limit the ability to discipline employees for misconduct.

Congress expressly provided that the two lists of examples of major life activities are non-exhaustive, and the Commission is authorized to recognize additional examples of major life activities. The final regulations retain "interacting with others" as an example of a major life activity, consistent with the Commission's long-standing position in existing enforcement guidance.

One disability rights group also asked the Commission to delete the long-standing definition of major life activities as those basic activities that most people in the general population "can perform with little or no difficulty" and substitute a lower standard. Upon consideration, we think that, while the ability of most people to perform the

activity is relevant when evaluating whether an individual is substantially limited, it is not relevant to whether the activity in question is a major life activity. Consequently, the final rule, like the statute itself, simply provides examples of activities that qualify as "major life activities" because of their relative importance.

Finally, some commenters asked that the final rule state explicitly that the standard from *Toyota Motor Mfg., Ky., Inc.* v. *Williams,* 534 U.S. 184 (2002), for determining whether an activity qualifies as a major life activity—that it be of "central importance to most people's daily lives"—no longer applies after the ADA Amendments Act. The Commission agrees and has added language to this effect in the final regulations.

We have provided this clarification in the regulations, and, in the appendix, we explain what this means with respect to, for example, activities such as lifting and performing manual tasks. The final regulations also state that in determining other examples of major life activities, the term "major" shall not be interpreted strictly to create a demanding standard for disability, and provide that whether an activity is a "major life activity" is not determined by reference to whether it is of "central importance to daily life."

Section 1630.2(j): Substantially Limits

Overview

Although much of § 1630.2(j) of the final regulations is substantively the same as § 1630.2(j) of the NPRM, the structure of the section is somewhat different. Many of the examples that were in the text of the proposed rule have been relocated to the appendix. Section 1630.2(j)(1) in the final regulations lists nine "rules of construction" that are based on the statute itself and are essentially consistent with the content of §§ 1630.2(j)(1) through (4) of the NPRM. Section 1630.2(j)(2) in the final regulations makes clear that the question of whether an individual is substantially limited in a major life activity is not relevant to coverage under the "regarded as" prong. Section 1630.2(j)(3)(ii) in the final regulations notes that some impairments will, given their inherent nature, virtually always be found to impose a substantial limitation on a major life activity. Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward. In addition, § 1630.2(j)(3)(iii) includes examples of impairments that should easily be found to substantially limit a major life activity. These are the same impairments that were included as examples in § 1630.2(j)(5) of the NPRM. In response to comments (discussed below), § 1630.2(j)(4) discusses the concepts of "condition, manner, or duration" that may be useful in evaluating whether an individual is substantially limited in a major life activity in some cases. Section 1630.2(j)(5) in the final regulations offers examples of mitigating measures, and § 1630.2(j)(6) contains the definition of "ordinary eyeglasses or contact lenses." The discussion of how to determine whether someone is substantially limited in working in those rare cases where this may be at issue now appears in the appendix rather than the regulations, and has been revised as explained below. Finally, NPRM § 1630.2(j)(6), describing certain impairments that may or may not meet the definition of "substantially limits," and NPRM § 1630.2(j)(8), describing certain impairments that usually will not meet the definition of "substantially limits," have been deleted in favor of an affirmative statement in both the final regulations and the appendix that not every impairment will constitute a disability within the meaning of § 1630.2(j) (defining "substantially limits").

Meaning of "Substantially Limits"

Many commenters asked that the Commission more affirmatively define "substantially limits." Suggestions for further definitions of "substantial" included, among others, "ample," "considerable," "more than moderately restricts," "discernable degree of difficulty," "makes achievement of the activity difficult," and "causes a material difference from the ordinary processes by which most people in the general population perform the major life activity." The Commission has not added terms to quantify "substantially limits" in the final regulations. We believe this is consistent with Congress's express rejection of such an approach in the statute, which instead simply indicates that "substantially limits" is a lower threshold than "prevents" or "severely or significantly restricts," as prior Supreme Court decisions and the EEOC regulations had defined the term. The Commission ultimately concluded that a new definition would inexorably lead to greater focus and intensity of attention on the threshold issue of coverage than intended by Congress. Therefore, following Congress's approach, the final regulations provide greater clarity and guidance by providing nine rules of construction that must be applied in determining whether an impairment substantially limits (or substantially limited) a major life activity. These rules are based on the provisions in the Amendments Act, and will guide interpretation of the term "substantially limits."

Comparison to "Most People"

The regulations say that in determining whether an individual has a substantially limiting impairment, the individual's ability to perform a major life activity should be compared to that of "most people in the general population." Both employer groups and organizations writing on behalf of individuals with disabilities said that the concept of "intra-individual" differences (disparities between an individual's aptitude and expected achievement versus the individual's actual achievement) that appears in the discussion of learning disabilities in the NPRM's appendix is inconsistent with the rule that comparison of an individual's limitations is always made by reference to most people. However, the Commission also received some comments from disability groups requesting that, in the assessment of whether an individual is substantially limited, the regulations allow for comparisons between an individual's experiences with and without an impairment, and comparisons between an individual and her peers—in addition to comparisons of the individual to "most people."

The Commission agrees that the reference to "intra-individual" differences, without further explanation, may be misconstrued as at odds with the agency's view that comparisons are always made between an individual and most people. Therefore, the Commission has added language to the discussion of learning disabilities in the appendix, in § 1630.2(j)(1)(v), clarifying that although learning disabilities may be diagnosed in terms of the difference between an individual's aptitude and actual versus expected achievement, a comparison to "most people" can nevertheless be made. Moreover, the appendix provides examples of ameliorative effects of mitigating measures that will be disregarded in making this comparison, and notes legislative history rejecting the assumption that an individual who has performed well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking.

Relevance of Duration of an Impairment's Limitations in Assessing "Substantially Limits"

Many commenters expressed their view that the NPRM failed to clarify, or created confusion regarding, how long an impairment's limitation(s) must last in order for the impairment to be considered substantially limiting. Some thought the Commission was saying that impairments that are "transitory and minor" under the third prong can nevertheless be covered under the first or second prong of the definition of "disability." A few comments suggested that the Commission adopt a minimum duration of six months for an impairment to be considered substantially limiting, but more commenters simply wanted the Commission to specify whether, and if so what, duration is necessary to establish a substantial limitation.

In enacting the ADA Amendments Act, Congress statutorily defined "transitory" for purposes of the "transitory and minor" exception to newly-defined "regarded as" coverage as "an impairment with an actual or expected duration of 6 months or less," but did not include that limitation with respect to the first or second prong in the statute. 42 U.S.C. 12102(3)(B). Moreover, prior to the Amendments Act, it had been the Commission's long-standing position that if an impairment substantially limits, is expected to substantially limit, or previously substantially limited a major life activity for at least several months, it could be a disability under § 1630.2(g)(1) or a record of a disability under § 1630.2(g)(2). *See, e.g., EEOC Compliance Manual Section 902,* "*Definition of the Term Disability,*" § 902(4)(d) (originally issued in 1995), *http://www.eeoc.gov/policy/docs/902cm.html; EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities* (1997), *http://www.eeoc.gov/policy/docs/psych.html.* A six-month durational requirement would represent a more stringent standard than the EEOC had previously required, not the lower standard Congress sought to bring about through enactment of the ADA Amendments Act. Therefore, the Commission declines to provide for a six-month durational minimum for showing disability under the first prong or past history of a disability under the second prong.

Additionally, the Commission has not in the final regulations specified any specific minimum duration that an impairment's effects must last in order to be deemed substantially limiting. This accurately reflects the intent of the ADA Amendments Act, as conveyed in the joint statement submitted by co-sponsors Hoyer and Sensenbrenner. That statement explains that the duration of an impairment is only one factor in determining whether the impairment substantially limits a major life activity, and impairments that last only a short period of time may be covered if sufficiently severe. *See* Joint Hoyer-Sensenbrenner Statement on the Origins of the ADA Restoration Act of 2008, H.R. 3195 at 5.

Mitigating Measures

The final regulations retain, as one of the nine rules of construction, the statutory requirement that mitigating measures, other than ordinary eyeglasses or contact lenses, must not be considered in determining whether an individual has a disability. Several organizations representing persons with disabilities suggested adding more examples of mitigating measures, including: job coaches, service animals, personal assistants, psychotherapy and other "human-mediated" treatments, and some specific devices used by persons who have hearing and/or vision impairments.

In the final regulations, the Commission has added psychotherapy, behavioral therapy, and physical therapy. In the appendix, the Commission has explained why other suggested examples were not included, noting first that the list is non-exhaustive. Some suggested additional examples of mitigating measures are also forms of reasonable accommodation, such as the right to use a service animal or job coach in the workplace. The Commission emphasizes that its decision not to list certain mitigating measures does not create any inference that individuals who use these measures would not meet the definition of "disability." For example, as the appendix points out, someone who uses a service animal will still be able to demonstrate a substantial limitation in major life activities such as *see*ing, hearing, walking, or performing manual tasks (depending on the reason the service animal is used).

Several employer groups asked the Commission to identify legal consequences that follow from an individual's failure to use mitigating measures that would alleviate the effects of an impairment. For example, some commenters suggested that such individuals would not be entitled to reasonable accommodation. The Commission has included a statement in the appendix pointing out that the determination of whether or not an individual's impairment substantially limits a major life activity is unaffected by whether the individual chooses to forgo mitigating measures. For individuals who do not use a mitigating measure (including, for example, medication or reasonable accommodation that could alleviate the effects of an impairment), the availability of such measures has no bearing on whether the impairment substantially limits a major life activity. The limitations imposed by the impairment on the individual, and any negative (non-ameliorative) effects of mitigating measures used, determine whether an impairment is substantially limiting. The origin of the impairment, whether its effects can be mitigated, and any ameliorative effects of mitigating measures in fact used may not be considered in determining if the impairment is substantially limiting. However, the use or non-use of mitigating measures, and any consequences thereof, including any ameliorative and non-ameliorative effects, may be relevant in determining whether the individual is qualified or poses a direct threat to safety.

Commenters also asked for a clear statement regarding whether the non-ameliorative effects of mitigating measures may be considered in determining whether an impairment is substantially limiting. Some also asked for guidance regarding whether the positive and negative effects of mitigating measures can be taken into account when determining whether an individual needs a reasonable accommodation.

The final regulations affirmatively state that non-ameliorative effects may be considered in determining whether an impairment is substantially limiting. The appendix clarifies, however, that in many instances it will not be necessary to consider the non-ameliorative effects of mitigating measures to determine that an impairment is substantially limiting. For example, whether diabetes is substantially limiting will most often be analyzed by considering its effects on endocrine functions in the absence of mitigating measures such as medications or insulin, rather than by considering the measures someone must undertake to keep the condition under control (such as frequent blood sugar and insulin monitoring and rigid adherence to dietary restrictions). Likewise, whether someone with kidney disease has a disability will generally be assessed by considering limitations on kidney and bladder functions that would occur without dialysis rather than by reference to the burdens that dialysis treatment imposes. The

appendix also states that both the ameliorative and non-ameliorative effects of mitigating measures may be relevant in deciding non-coverage issues, such as whether someone is qualified, needs a reasonable accommodation, or poses a direct threat.

Some commenters also asked for a more precise definition than the statutory definition of the term "ordinary eyeglasses or contact lenses." For example, one commenter proposed that "fully corrected" means visual acuity of 20/20. Another commenter representing human resources professionals from large employers suggested a rule that any glasses that can be obtained from a "walk-in retail eye clinic" would be considered ordinary eyeglasses or contact lenses, including bi-focal and multi-focal lenses. An organization representing individuals who are blind or have vision impairments wanted us to say that glasses that enhance or augment a visual image but that may resemble ordinary eyeglasses should not be considered when determining whether someone is substantially limited in *see*ing.

The final regulations do not adopt any of these approaches. The Commission believes that the NPRM was clear that the distinction between "ordinary eyeglasses or contact lenses" on the one hand and "low vision devices" on the other is how they function, not how they look or where they were purchased. Whether lenses fully correct visual acuity or eliminate refractive error is best determined on the basis of current and objective medical evidence. The Commission emphasizes, however, that even if such evidence indicates that visual acuity is fully corrected or that refractive error is eliminated, this means only that the effect of the eyeglasses or contact lenses shall be considered in determining whether the individual is substantially limited in *see*ing, not that the individual is automatically excluded from the law's protection.

Numerous comments were made on the proposed inclusion of surgical interventions as mitigating measures. Many asked the Commission to delete the reference to surgical interventions entirely; others wanted us to delete the qualification that surgical interventions that permanently eliminate an impairment are not considered mitigating measures. Some comments proposed language that would exclude from mitigating measures those surgical interventions that "substantially correct" an impairment. Some comments endorsed the definition as written, but suggested we provide examples of surgical interventions that would permanently eliminate an impairment.

The Commission has eliminated "surgical interventions, except for those that permanently eliminate an impairment" as an example of a mitigating measure in the regulation, given the confusion evidenced in the comments about how this example would apply. Determinations about whether surgical interventions should be taken into consideration when assessing whether an individual has a disability are better assessed on a case-by-case basis.

Finally, some commenters asked the Commission to address generally what type of evidence would be sufficient to establish whether an impairment would be substantially limiting without the ameliorative effects of a mitigating measure that the individual uses. In response to such comments, the Commission has added to the appendix a statement that such evidence could include evidence of limitations that a person experienced prior to using a mitigating measure, evidence concerning the expected course of a particular disorder absent mitigating measures, or readily available and reliable information of other types.

Impairments That Are Episodic or in Remission

One commenter suggested that the regulatory provision on impairments that are "episodic or in remission" should be clarified to eliminate from coverage progressive impairments such as Parkinson's Disease on the ground that they would not be disabilities in the "early stages." The Commission declines to make this revision, recognizing that because "major bodily functions" are themselves "major life activities," Parkinson's Disease even in the "early stages" can substantially limit major life activities, such as brain or neurological functions. Some employer groups also asked the Commission to provide further guidance on distinguishing between episodic conditions and those that may, but do not necessarily, become episodic, as indicated by subsequent "flare ups." As the Commission has indicated in the regulations and appendix provisions on mitigating measures, these questions may in some cases be resolved by looking at evidence such as limitations experienced prior to the use of the mitigating measure or the expected course of a disorder absent mitigating measures. However, recognizing that there may be various ways that an impairment may be shown to be episodic, we decline to address such evidentiary issues with any greater specificity in the rulemaking.

Predictable Assessments

Section 1630.2(j)(5) of the NPRM provided examples of impairments that would "consistently meet the definition of disability" in light of the statutory changes to the definition of "substantially limits." Arguing that § 1630.2(j)(5) of the NPRM created a "per se list" of disabilities, many commenters, particularly representatives of employers and employer organizations, asked for the section's deletion, so that all impairments would be subject to the same individualized assessment. Equally strong support for this section was expressed by organizations representing individuals with disabilities, some of whom suggested that impairments such as learning disabilities, AD/HD, panic and anxiety disorder, hearing impairments requiring use of a hearing aid or cochlear implant, mobility impairments requiring the use of canes, crutches, or walkers, and multiple chemical sensitivity be added to the list of examples in NPRM § 1630.2(j)(5). Many of the commenters who expressed support for this section also asked that NPRM § 1630.2(j)(6) (concerning impairments that may be substantially limiting for some individuals but not for others) be deleted, as it *see*med to suggest that these impairments were of lesser significance than those in NPRM § (j)(5).

In response to these concerns, the Commission has revised this portion of the regulations to make clear that the analysis of whether the types of impairments discussed in this section (now § 1630.2(j)(3)) substantially limit a major life activity does not depart from the hallmark individualized assessment. Rather, applying the various principles and rules of construction concerning the definition of disability, the individualized assessment of some types of impairments will, in virtually all cases, result in a finding that the impairment substantially limits a major life activity, and thus the necessary individualized assessment of these types of impairments should be particularly simple and straightforward. The regulations also provide examples of impairments that should easily be found to substantially limit a major life activity.

The Commission has also deleted § 1630.2(j)(6) that appeared in the NPRM. However, the Commission did not agree with those commenters who thought it was necessary to include in § 1630.2(j)(3) of the final regulations all the impairments that were the subject of

examples in NPRM § 1630.2(j)(6), or that other impairments not previously mentioned in either section should be included in (j)(3). The Commission has therefore declined to list additional impairments in § 1630.2(j)(3) of the final regulations. The regulations as written permit courts to conclude that any of the impairments mentioned in § 1630.2(j)(6) of the NPRM or other impairments "substantially limit" a major life activity.

Section 1630.2(j)(8) of the NPRM provided examples of impairments that "are usually not disabilities." Some commenters asked for clarity concerning whether, and under what circumstances, any of the impairments included in the examples might constitute disabilities under the first or second prong, or asked that the section title be revised by replacing "usually" with "consistently." Other commenters asked whether the listed impairments would be considered "transitory and minor" for purposes of the "regarded as" definition, or wanted clarification that the listed impairments were not necessarily "transitory and minor" in all instances. A few organizations recommended deletion of certain impairments from the list of examples, such as a broken bone that is expected to heal completely and a sprained joint. In the final regulations, the Commission deleted this section, again due to the confusion it presented.

Condition, Manner, or Duration

Comments from both employers and groups writing on behalf of individuals with disabilities proposed that the Commission continue to use the terms "condition, manner, or duration," found in the appendix accompanying EEOC's 1991 ADA regulations, as part of the definition of "substantially limits." Many employer groups seemed to think the concepts were relevant in all cases; disability groups generally thought they could be relevant in some cases, but do not need to be considered rigidly in all instances.

In response, the Commission has inserted the terms "condition, manner, or duration" as concepts that may be relevant in certain cases to show how an individual is substantially limited, although the concepts may often be unnecessary to conduct the analysis of whether an impairment "substantially limits" a major life activity. The Commission has also included language to illustrate what these terms mean, borrowing from the examples in § 1630.2(j)(6) of the NPRM, which has been deleted from the final regulations. For example, "condition, manner, or duration" might mean the difficulty or effort required to perform a major life activity, pain experienced when performing a major life activity, the length of time a major life activity can be performed, or the way that an impairment affects the operation of a major bodily function.

Substantially Limited in Working

The proposed rule had replaced the concepts of a "class" or "broad range" of jobs from the 1991 regulations defining substantial limitation in working with the concept of a "type of work." A number of commenters asked the Commission to restore the concepts of a class or broad range of jobs. Many other comments supported the "type of work" approach taken in the NPRM. Some supporters of the "type of work" approach sought additional examples of types of work (e.g., jobs requiring working around chemical fumes and dust, or jobs that require keyboarding or typing), and requested that certain statements in the appendix be moved into the regulations.

In issuing the final regulations, the Commission has moved the discussion of how to analyze the major life activity of working to the appendix, since no other major life activity is singled out in the regulations for elaboration. Rather than attempting to articulate a new "type of work" standard that may cause unnecessary confusion, the Commission has retained the original part 1630 "class or broad range of jobs" formulation in the appendix, although we explain how this standard must be applied differently than it was prior to the Amendments Act. We also provide a more streamlined discussion and examples of the standard to comply with Congress's exhortation in the Amendments Act to favor broad coverage and disfavor extensive analysis (Section 2(b)(5) (Findings and Purposes)).

Section 1630.2(k): Record of a Disability

Some commenters asked the Commission to revise this section to state that a "record" simply means a past history of a substantially limiting impairment, not necessarily that the past history has to be established by a specific document. Although some commenters sought deletion of the statement (in §§ 1630.2(o) and 1630.9) that individuals covered under the "record of" prong may get reasonable accommodations, others agreed that the language of the Amendments Act is consistent with the Commission's long-held position and wanted examples of when someone with a history of a substantially limiting impairment would need accommodation. Some comments recommended that the Commission make the point that a person with cancer (identified in one of the NPRM examples) could also be covered under the first prong.

The final regulations streamline this section by moving the examples of "record of" disabilities to the appendix. The Commission has also added a paragraph to this section to make clear that reasonable accommodations may be required for individuals with a record of an impairment that substantially limits a major life activity, and has provided an example of when a reasonable accommodation may be required. The Commission has not added language to state explicitly that the past history of an impairment need not be reflected in a specific document; we believe that this is clear in current law, and this point is reflected in the appendix.

Section 1630.2(l): Regarded As

Many comments revealed confusion as to both the new statutory and proposed regulatory definition of the "regarded as" prong in general, and the "transitory and minor" exception in particular. Other comments simply requested clarification of the "transitory and minor" exception. The final regulations provide further clarification and explanation of the scope of "regarded as" coverage.

The final regulations and appendix make clear that even if coverage is established under the "regarded as" prong, the individual must still establish the other elements of the claim (e.g., that he or she is qualified) and the employer may raise any available defenses. In other words, a finding of "regarded as" coverage is not itself a finding of liability.

The final regulations and appendix also explain that the fact that the "regarded as" prong requires proof of causation in order to show that a person is covered does not mean that proving a claim based on "regarded as" coverage is complex. As noted in the appendix, while a person must show, both for coverage under the "regarded as" prong and for ultimate liability, that he or she was subjected to a prohibited action because of an actual or perceived impairment, this showing need only be made once. Thus, a person proceeding under the "regarded as" prong may demonstrate a violation of the ADA by meeting the burden of proving that: (1) He or she has an impairment or was perceived by a covered entity to have an impairment, and (2) the covered entity discriminated against him or her because of the impairment in violation of the statute. Finally, the final regulations make clear that an employer

may show that an impairment is "transitory and minor" as a defense to "regarded as" coverage. 29 CFR 1630.15(f).

The final regulations and appendix, at § 1630.2(j), also make clear that the concepts of "major life activities" and "substantially limits" (relevant when evaluating coverage under the first or second prong of the definition of "disability") are not relevant in evaluating coverage under the "regarded as" prong. Thus, in order to have regarded an individual as having a disability, a covered entity need not have considered whether a major life activity was substantially limited, and an individual claiming to have been regarded as disabled need not demonstrate that he or she is substantially limited in a major life activity.

Concerning specific issues with which commenters disagreed, some criticized examples of impairments that the Commission said would be considered transitory and minor—specifically, a broken leg that heals normally and a sprained wrist that limits someone's ability to type for three weeks. These commenters claimed that these impairments, though transitory, are not minor. Consistent with its effort to streamline the text of the final rule, the Commission has deleted examples that appeared in the NPRM, illustrating how the "transitory and minor" exception applies. However, the appendix to § 1630.2(l) as well as the defense as set forth in § 1630.15(f) include examples involving an employer that takes a prohibited action against an employee with bipolar disorder that the employer claims it believed was transitory and minor, and an employer that takes a prohibited action against an individual with a transitory and minor hand wound that the employer believes is symptomatic of HIV infection. These examples are intended to illustrate the point that whether an actual or perceived impairment is transitory and minor is to be assessed objectively.

In response to a specific request in the preamble to the NPRM, the Commission received many comments about the position in the proposed rule that actions taken because of an impairment's symptoms or because of the use of mitigating measures constitute actions taken because of an impairment under the "regarded as" prong. Individuals with disabilities and organizations representing them for the most part endorsed the position, noting that the symptoms of, and mitigating measures used for, an impairment are part and parcel of the impairment itself, and that this provision is necessary to prevent employers from evading "regarded as" coverage by asserting that the challenged employment action was taken because of the symptom or medication, not the impairment, even when it knew of the connection between the two. Others asked the Commission to clarify that this interpretation applied even where the employer had no knowledge of the connection between the impairment and the symptom or mitigating measure. However, employers and organizations representing employers asked that this language be deleted in its entirety. They were particularly concerned that an employer could be held liable under the ADA for disciplining an employee for violating a workplace rule, where the violation resulted from an underlying impairment of which the employer was unaware.

In light of the complexity of this issue, the Commission believes that it requires a more comprehensive treatment than is possible in this regulation. Therefore, the final regulations do not explicitly address the issue of discrimination based on symptoms or mitigating measures under the "regarded as" prong. No negative inference concerning the merits of this issue should be drawn from this deletion. The Commission's existing position, as expressed in its policy guidance, court filings, and other regulatory and sub-regulatory documents, remains unchanged.

Finally, because the new law makes clear that an employer regards an individual as disabled if it takes a prohibited action against the individual because of an actual or perceived impairment that was not "transitory and minor," whether or not myths, fears, or stereotypes about disability motivated the employer's decision, the Commission has deleted certain language about myths, fears, and stereotypes from the 1991 version of this section of the appendix that might otherwise be misconstrued when applying the new ADA Amendments Act "regarded as" standard.

Issues Concerning Evidence of Disability

The Commission also received comments from both employer groups and organizations writing on behalf of people with disabilities asking that the regulations address what kind of information an employer may request about the nature of an impairment (e.g., during the interactive process in response to a request for reasonable accommodation), and the amount and type of evidence that would be sufficient in litigation to establish the existence of a disability. Some employer groups, for example, asked the Commission to emphasize that a person requesting a reasonable accommodation must participate in the interactive process by providing appropriate documentation where the disability and need for accommodation are not obvious or already known. Organizations writing on behalf of persons with disabilities asked the Commission to state in the regulations that a diagnosis of one of the impairments in NPRM § 1630.2(j)(5) is sufficient to establish the existence of a disability; that the Commission should emphasize, even more so than in the NPRM, that proving disability is not an onerous burden; that in many instances the question of whether a plaintiff in litigation has a disability should be the subject of stipulation by the parties; and that an impairment's effects on major bodily functions should be considered before its effects on other major life activities in determining whether an impairment substantially limits a major life activity. Both employer groups and organizations submitting comments on behalf of individuals with disabilities asked the Commission to clarify the statement in the NPRM that objective scientific and medical evidence can be used to establish the existence of a disability.

The Commission believes that most of these proposed changes regarding evidentiary matters are either unnecessary or not appropriate to address in the regulations. For example, the Commission has stated repeatedly in numerous policy documents and technical assistance publications that individuals requesting accommodation must provide certain supporting medical information if the employer requests it, and that the employer is permitted to do so if the disability and/or need for accommodation are not obvious or already known. The ADA Amendments Act does not alter this requirement. The Commission also does not think it appropriate to comment in the regulations or the appendix on how ADA litigation should be conducted, such as whether parties should stipulate to certain facts or whether use of certain major life activities by litigants or courts should be preferred.

However, based on the comments received, the Commission has concluded that clarification of language in the NPRM regarding use of scientific and medical evidence is warranted. The final regulations, at § 1630.2(j)(1)(v), state that the comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the

general population usually will not require scientific, medical, or statistical analysis. However, the final regulations also state that this provision is not intended to prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate. In addition, the appendix discusses evidence that may show that an impairment would be substantially limiting in the absence of the ameliorative effects of mitigating measures.

Section 1630.2(m): Definition of "Qualified"

The final regulations and accompanying appendix make slight changes to this section to eliminate use of the term "qualified individual with a disability," consistent with the ADA Amendments Act's elimination of that term throughout most of title I of the ADA.

Section 1630.2(o): Reasonable Accommodation

The Commission has added a new provision (o)(4) in § 1630.2(o) of the final regulations, providing that a covered entity is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the "regarded as" prong (§ 1630.2(g)(1)(iii)). The Commission has also made changes to this section to eliminate use of the term "qualified individual with a disability," consistent with the ADA Amendments Act's elimination of that term throughout most of title I of the ADA.

Section 1630.4: Discrimination Prohibited

The Commission has reorganized § 1630.4 of the final regulations, adding a new provision in § 1630.4(b) to provide, as stated in the Amendments Act, that nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of his lack of disability, including a claim that an individual with a disability was granted an accommodation that was denied to an individual without a disability.

Section 1630.9: Not Making Reasonable Accommodation

The final regulations include a technical revision to § 1630.9(c) to conform citations therein to the amended ADA. In addition, a new § 1630.9(e) has been added stating again that a covered entity is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the "regarded as" prong (§ 1630.2(g)(1)(iii)). In addition, the appendix to § 1630.9 is amended to revise references to the term "qualified individual with a disability" in order to conform to the statutory changes made by the Amendments Act.

Section 1630.10: Qualification Standards, Tests, and Other Selection Criteria.

The final regulations include a new § 1630.10(b) explaining the amended ADA provision regarding qualification standards and tests related to uncorrected vision.

Section 1630.15: Defenses

The final regulations include a new § 1630.15(f), and accompanying appendix section, explaining the "transitory and minor" defense to a charge of discrimination where coverage would be shown solely under the "regarded as" prong of the definition.

Section 1630.16: Specific Activities Permitted

The final regulations include terminology revisions to §§ 1630.16(a) and (f) to conform to the statutory deletion of the term "qualified individual with a disability" in most parts of title I.

Regulatory Procedures

Final Regulatory Impact Analysis

Executive Orders 12866 and 13563

The final rule, which amends 29 CFR Part 1630 and the accompanying interpretive guidance, has been drafted and reviewed in accordance with EO 12866, 58 FR 51735 (Sept. 30, 1993), Principles of Regulations, and EO 13563, 76 FR 3821, (Jan. 21, 2011), Improving Regulation and Regulatory Review. The rule is necessary to bring the Commission's prior regulations into compliance with the ADA Amendments Act of 2008, which became effective January 1, 2009, and explicitly invalidated certain provisions of the prior regulations. The new final regulations and appendix are intended to add to the predictability and consistency of judicial interpretations and executive enforcement of the ADA as now amended by Congress.

The final regulatory impact analysis estimates the annual costs of the rule to be in the range of $60 million to $183 million, and estimates that the benefits will be significant. While those benefits cannot be fully quantified and monetized at this time, the Commission concludes that consistent with EO 13563, the benefits (quantitative and qualitative) will justify the costs. Also consistent with EO 13563, we have attempted to "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Commission notes, however, that the rule and the underlying statute create many important benefits that, in the words of EO 13563, stem from "values that are difficult or impossible to quantify." Consistent with EO 13563, in addition to considering the rule's quantitative effects, the Commission has considered the rule's qualitative effects. Some of the benefits of the ADA Amendments Act (ADAAA or Amendments Act) and this final rule are monetary in nature, and likely involve increased productivity, but cannot be quantified at this time.

Other benefits, consistent with the Act, involve values such as (in the words of EO 13563) "equity, human dignity, fairness, and distributive impacts." In its statement of findings in the Act, Congress emphasized that "in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers." One of the stated purposes of the ADA Amendments Act is "to carry out the ADA's objectives of providing 'a clear and comprehensive national mandate for the elimination of discrimination' and 'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection under the ADA." ADAAA Section 2(a)(1) and 2(b)(1). This rule implements that purpose by establishing standards for eliminating disability-based discrimination in the workplace. It also promotes inclusion and fairness in the workplace; combats second-class citizenship of individuals with disabilities; avoids humiliation and stigma; and promotes human dignity by enabling qualified individuals to participate in the workforce.

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Introduction

In enacting the ADA Amendments Act, Congress explicitly stated its expectation that the EEOC would amend its ADA regulations to reflect the changes made by the statute. These changes necessarily extend as well to the Interpretive Guidance (also known as the Appendix) that was published at the same time as the original ADA regulations and that provides further explanation on how the regulations should be interpreted.

The Amendments Act states that its purpose is "to reinstate a broad scope of protection" by expanding the definition of the term "disability." Congress found that persons with many types of impairments—including epilepsy, diabetes, HIV infection, cancer, multiple sclerosis, intellectual disabilities (formerly called mental retardation), major depression, and bipolar disorder—had been unable to bring ADA claims because they were found not to meet the ADA's definition of "disability." Yet, Congress thought that individuals with these and other impairments should be covered and revised the ADA accordingly. Congress explicitly rejected certain Supreme Court interpretations of the term "disability" and a portion of the EEOC regulations that it found had inappropriately narrowed the definition of disability. These amended regulations are necessary to implement fully the requirements of the ADA Amendments Act's broader definition of "disability."

Our assessment of both the costs and benefits of this rule was necessarily limited by the data that currently exists. Point estimates are not possible at this time. For that reason, and consistent with OMB Circular A–4, we have provided a range of estimates in this assessment.

The preliminary regulatory impact analysis ("preliminary analysis") set forth in the NPRM reviewed existing research and attempted to estimate the costs and benefits of the proposed rule. More specifically, the preliminary analysis attempted to estimate the costs employers would incur as the result of providing accommodations to more individuals with disabilities in light of the Amendments Act, the prevalence of accommodation already in the workplace, the cost per accommodation, the number of additional accommodations that the Amendments Act would need to generate to reach $100 million in costs in any given year, the administrative costs for firms with at least 150 employees, and the reported benefits of providing reasonable accommodations.

The preliminary analysis concluded that the costs of the proposed rule would very likely be below $100 million, but did not provide estimates of aggregated monetary benefits. Because existing research measuring the relevant costs and benefits is limited, the Commission's NPRM solicited public comment on its data and analysis.

The Commission's final regulatory impact analysis is based on the preliminary assessment but has changed significantly based on comments received during the public comment period on the NPRM as well as the inter-agency comment period on the final regulations under EO 12866.[1] These changes are consistent with the public participation provisions in EO 13563 and reflect the importance of having engaged and informed public participation. The limitations of the preliminary analysis approach are outlined below, and an alternative approach is provided to illustrate the range of benefits and costs.

These estimates are discussed seriatim in the following sections of this analysis.

I. Estimated Costs

A. Estimate of Increased Number of Individuals Whose Coverage Is Clarified by the ADAAA and the Final Regulations

For those employers that have 15 or more employees and are therefore covered by the proposed regulations, the potential costs of the rule stem from the likelihood that, due to Congress's mandate that the definition of disability be applied in a less restrictive manner, more individuals will qualify for coverage under the portion of the definition of disability that entitles them to request and receive reasonable accommodations.[2] Thus, we first consider the number of individuals whose coverage is clarified by the ADAAA and the final rule as a result of the changes made to the definition of "substantially limits a major life activity."[3] We then consider how many such individuals are likely to be participating in the labor force.

[1] The Commission specifically undertook to provide extensive opportunities for public participation in this rulemaking process. In addition to the more than 600 written comments received during the 60-day public comment period on the NPRM, the EEOC and the U.S. Department of Justice Civil Rights Division during that period also held four "Town Hall Listening Sessions" in Oakland, California on October 26, 2009, in Philadelphia, Pennsylvania on October 30, 2009, in Chicago, Illinois on November 17, 2009, and in New Orleans, Louisiana on November 20, 2009. For each of these sessions, Commissioners offered to be present all day to receive in-person or telephonic comments on any aspect of the NPRM from members of the public on both a pre-registration and walk-in basis. More than 60 individuals and representatives of the business/employer community and the disability advocacy community from across the country offered comments at these four sessions, a number of whom additionally submitted written comments.

[2] Individuals who are covered under the first two prongs of the definition of disability are entitled to reasonable accommodations, as well as to challenge hiring, promotion, and termination decisions and discriminatory terms and conditions of employment. Individuals covered solely under the third prong of the definition of disability are not entitled to reasonable accommodations. As we noted in the preliminary regulatory impact analysis, the primary costs are likely to derive from increased numbers of accommodations being provided by employers—assuming an accommodation is needed, an employee is qualified, and the accommodation does not pose an undue hardship. No comments challenged that assessment. Thus, while we discuss proposed increases in litigation costs below (which apply to claims brought by individuals covered under any prong of the definition), we focus our attention in this section on those individuals whose coverage is clarified under the first two prongs of the definition of disability.

[3] Prior to the ADAAA, individuals with impairments such as cancer, diabetes, epilepsy and HIV infection were sometimes found to be covered under the ADA, and sometimes not, depending on how well they functioned with their impairments, taking into account mitigating measures. Thus, it is not appropriate to say that all such individuals are "newly covered" under the ADA. For that reason, we refer to this group throughout this analysis as a group whose "coverage has been clarified" under the ADAAA.

(1) Summary of Preliminary Analysis

The preliminary regulatory impact analysis relied on a variety of demographic surveys conducted by the U.S. government which are designed to estimate the number of people with disabilities in the labor force. The resulting estimates differ somewhat based on the survey design, the sample size, the age range of the population under study, who is actually being surveyed (the household or the individual), the mode of survey administration, the definition of disability used, and the time-frame used to define employment status.

In attempting to estimate the increased number of individuals whose coverage was clarified by the ADAAA and who might need and request accommodation,[4] the Commission's preliminary impact analysis examined data from the following major population-representative Federal surveys that contain information about people with disabilities and their employment status: the Current Population Survey (CPS), the American Community Survey (ACS), the National Health Interview Survey (NHIS), and the Survey of Income and Program Participation (SIPP). Noting the limitations of this data as applied to estimating the number of individuals affected by the amended ADA, we nevertheless estimated that there were 8,229,000 people with disabilities who were working in 2007, and that between 2.2 million and 3.5 million workers reported that they had disabilities that caused difficulty in working.[5]

Both public comments and comments received during the inter-agency review process under EO 12866 highlighted a variety of limitations in our analysis. Indeed, the alternative that we later present indicates that the figure of 8.2 million people with disabilities used in the preliminary analysis significantly underestimated the number of workers with impairments whose coverage under the law will now be clarified.

The indicator of "disability" used by the ACS, CPS, and NIHS depends on a series of six questions that address functionality, including questions about whether an individual has any of the following: a severe vision or hearing impairment; a condition that substantially limits one or more basic physical activities such as walking, climbing stairs, reaching, lifting, or carrying; a physical, mental, or emotional condition lasting 6 months or more that results in difficulty learning, remembering, or concentrating; or a severe disability that results in difficulty dressing, bathing, getting around inside the home, going outside the home alone to shop or visit a doctor's office, or working at a job or business.

This survey definition clearly captures only a subset of the group of people with disabilities who would be covered under the ADA as amended. For example, among other things:

—With respect to both physical and mental impairments, the survey definition does not account for the addition of the operation of major bodily functions as major life activities under the newly amended law, such as functions of the immune system, normal cell growth, and brain, neurological, and endocrine functions. This makes it especially likely that the survey data is under-inclusive as to individuals with impairments such as HIV infection, epilepsy, cancer, diabetes, and mental impairments whose coverage is now clarified under the ADA.

—Even with respect to major life activities other than major bodily functions, the survey definition covers a narrower range of individuals with mental impairments since it is limited to mental or emotional conditions that result in difficulty learning, remembering, concentrating, or a severe disability resulting in difficulty doing specific self-care activities.

—The survey definition overall reflects an attempt to capture individuals with impairments whose limitations are considered "severe"— a degree of limitation which is no longer required in order for an impairment to be considered substantially limiting under the ADA as amended.

—The survey definition expressly excludes many individuals whose impairments last fewer than 6 months, even though such impairments may substantially limit a major life activity under the ADA prior to and after the ADA Amendments.

—The survey definition is limited to impairments that currently substantially limit a major life activity, and therefore does not capture individuals with a record of a substantially limiting impairment who may still need accommodation arising from that past history.

In the preliminary analysis, we used the number of employed individuals who have functional disabilities (as indicated by the six-question set described above) as a surrogate for the number of individuals with any disability who are working. We then tried to determine the subset of those employed individuals with disabilities whose coverage would be newly clarified as a result of the Amendments Act, acknowledging that some people whose coverage would be potentially clarified by the Amendments Act were probably not included in this baseline.

We declined to use the subset of workers with reported employment related disabilities, because we assumed that some of these individuals would have been covered even under the pre-ADAAA definition of "disability." Instead, the preliminary analysis examined the CDC's analysis of the Census/SIPP data on prevalence of certain medical conditions in the population of non-institutionalized individuals ages 18–64. *See* "Main cause of disability among civilian non-institutionalized U.S. adults aged 18 years or older with self reported disabilities, estimated affected population and percentages, by sex—United States, 2005," *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5816a2.htm* (last visited Mar. 1, 2010). We chose to focus on those impairments in § 1630.2(j)(5) of the NPRM (those impairments that we believed would "consistently" meet the definition of a substantially limiting impairment), since we considered individuals with such impairments to be most likely to request accommodations as a result of the regulations due to a greater degree of certainty that they would be covered. We concluded that this data suggested that 13 percent of civilian non-institutionalized adults with disabilities have the following conditions: Cancer (2.2 percent), cerebral palsy (0.5 percent), diabetes (4.5 percent), epilepsy (0.6 percent), AIDS or AIDS related condition (0.2 percent), "mental or emotional" impairment (4.9 percent).

We assumed in our preliminary analysis that these impairments would occur with the same degree of frequency among employed adults who have functional disabilities as they do among

[4] The preliminary analysis focused on individuals whose coverage would be clarified under the ADAAA and who might need and request an accommodation. For purposes of clarity, our final assessment focuses first on the number of individuals whose coverage will be clarified under the ADAAA and who are participating in the labor force. We then move to a separate analysis of how many of those individuals might need and request accommodations.

[5] From 2003–07, the ACS included the following question on "Employment Disability" asked of persons ages 15 or older: "Because of a physical, mental, or emotional condition lasting six months or more, does this person have any difficulty in doing any of the following activities: (b) working at a job or business?" *See* "Frequently Asked Questions," Cornell University Disability Statistics, Online Resource for U.S. Disability Statistics, *http://www.ilr.cornell.edu/edi/disabilitystatistics faq.cfm.*

the population of persons with disabilities generally, and so multiplied 13% times 8,229,000 workers with reported disabilities. We thus estimated that approximately 1,000,000 workers with disabilities had impairments that were more likely to be covered as the result of the ADAAA and the EEOC's regulations.

(2) Comments on Preliminary Analysis

The Commission received a number of public comments from employer associations arguing that our figures underestimated the increase in the number of individuals who would now be covered under the ADAAA, as people with disabilities. One employer association specifically argued that the Commission's preliminary estimate that 13 percent of the workers with work-limitation disabilities would consistently meet the definition of disability under NPRM § 1630.2(j)(5) left out a number of disabilities listed in that section such as autism, multiple sclerosis, and muscular dystrophy. This comment cited Centers for Disease Control (CDC) data that the prevalence rate for autism spectrum disorder is between 2 and 6 per 1,000 individuals, or 89,000 to 267,000 civilian non-institutionalized adults, as well as National Multiple Sclerosis Society data estimating that 400,000 Americans have multiple sclerosis, and Muscular Dystrophy Association statistics that approximately 250,000 Americans have muscular dystrophy. The commenter argued that adding these estimates to the 5.8 million non-institutionalized adults ages 18–64 who have cancer, cerebral palsy, diabetes, epilepsy, AIDS or AIDS related condition, or a mental or emotional impairment would increase the percentage of workers who would consistently meet the definition of disability under proposed section 1630.2(j)(5) to 15.1 percent. The commenter also noted that data from the Families and Work Institute estimates that 21 percent of workers are currently receiving treatment for high blood pressure, 7 percent have diabetes, and 4 percent are being treated for mental health issues. Finally, this commenter pointed out that a number of impairments similar to those listed in NPRM § 1630.2(j)(5), but not explicitly identified in that section, would presumably also meet the expanded definition of disability. Based on these observations, the commenter noted that the percentage of workers with covered disabilities could be 20 to 40 percent.

In contrast, some advocates for people with disabilities urged the Commission to delete any estimates at all of the numbers of persons who may meet the definition of "disability" as amended by the ADA Amendments Act or who may request reasonable accommodations. These groups noted that the broad purposes of the ADA, as compared to the more limited purposes of most existing data collections and the different definitions of "disability" used in those studies, made those estimates so uncertain, conjectural, and anecdotal as to be unhelpful and potentially detrimental to the goals of the ADAAA.

In addition, these advocates disputed the Commission's willingness in the preliminary analysis to allow that there may be an increase in requests for accommodation as a result of the ADAAA or the regulations, and therefore disagreed with the underlying premise of attempting to estimate the number of individuals with disabilities generally or the increase in the number of individuals whose coverage under the ADA would now be clarified. Their argument proceeded as follows: Employers and employees alike have generally been aware since title I of the ADA took effect in 1992 that requested accommodations needed by individuals with disabilities must be provided absent undue hardship, and that notwithstanding court rulings to the contrary, most employers and employees have continued to believe that disabilities include impairments such as those examples set forth in § 1630.2(j)(5) of the NPRM, e.g., epilepsy, depression, post traumatic stress disorder, multiple sclerosis, HIV infection, cerebral palsy, intellectual disabilities, bipolar disorder, missing limbs, and cancer. Therefore, these advocates argued, it is unlikely that individuals with such impairments have been refraining from requesting accommodations up until now, or that their requests for accommodation have been denied because they did not meet the legal definition of disability. This was the practical reality, even if improper denials by employers would have been difficult to remedy in the courts, given the pre-Amendments Act interpretation of the definition of disability.[6]

[6] These groups also noted that some individuals with covered disabilities will not seek work. Finally, they disputed the utility of the attempt to estimate the number of affected workers on the grounds the ADAAA simply restores the original interpretation of the definition of "disability," and there is no evidence that state or local laws with equivalent or broader definitions of disability have experienced a significant economic impact.

(3) Revised Analysis

(a) Number of Individuals Whose Coverage Is Clarified and Who Are Participating in the Labor Force

The Commission agrees with the comments made by both employer groups and advocates for people with disabilities that the referenced survey data regarding the numbers of workers with disabilities or with specific impairments—which, as noted in the preliminary analysis, researchers collected for other purposes—has limited relevance to determining the number of workers whose coverage has been clarified by the ADAAA. This conclusion qualifies any use of that data in the preliminary analysis, as well as in this final regulatory impact analysis.

In light of these limitations, we believe the Commission's preliminary analysis significantly underestimated the number of workers with disabilities whose coverage is clarified as a result of the ADAAA and the final regulations. First, we did not account for several impairments actually listed in § 1630.2(j)(3)(iii) of the final regulations, such as autism, multiple sclerosis, and muscular dystrophy. Second, as was pointed out during inter-agency review of the final regulations prior to publication, because the CDC analysis of the Census Data on the number of workers with self-reported disabilities was not derived in the same way as the ACS data, it would be incorrect to assume that CDC data on the prevalence of the impairments in § 1630.2(j)(3)(iii) reflects the frequency of those impairments among the 8,229,000 non-institutionalized workers with disabilities aged 18–64 found by the ACS. Moreover, as discussed below, the figures in the CDC analysis of the Census Data are obviously far lower than reported data on the incidence of these impairments in the population overall.

Therefore, for purposes of this final analysis, informed by both the public comments and comments received during the inter-agency review process under EO 12866, we conclude that the figure of 8.2 million people with disabilities used in the preliminary analysis, and the calculations made with it, significantly underestimated the number of workers with impairments that will now be covered as having a substantially limiting impairment or record thereof under the ADAAA and the final regulations.

Our revised analysis proceeds as follows. In analyzing the available data, we are mindful of the fact that the Amendments Act was designed to make it easier to meet the definition of

disability under the ADA and to expand the universe of people considered to have disabilities. Prior to the Amendments Act, the Supreme Court in *Sutton* v. *United Air Lines, Inc.,* 527 U.S. 471 (1999), used the ADA's finding that approximately 43 million Americans had disabilities as part of its reason for concluding that the benefits of mitigating measures (e.g., medication, corrective devices) an individual used had to be taken into account when determining whether a person had a substantially limiting impairment. The Amendments Act rejected this restrictive definition of disability and explicitly removed this finding from the law. It also provided that the ameliorative effects of mitigating measures (except ordinary eyeglasses or contact lenses) were not to be taken into account in determining whether a person's impairment substantially limited a major life activity.

Thus, based on the Amendments Act's rejection of *Sutton* alone—apart from the many other changes it made to the definition of a substantial limitation in a major life activity—we know that the number of people now covered under the ADA as having a substantially limiting impairment or a record thereof should be significantly more than 43 million. (The Court surmised that the 43 million number was derived from a National Council on Disability report, *Toward Independence* (Feb. 1986), available at *http://www.ncd.gov/newsroom/publications/1986/toward.htm*, which in turn was based on Census Bureau data and other studies that used "functional limitation" analyses of whether individuals were limited in performing selected basic activities.)

Under the ADA as amended, the definition of an impairment that substantially limits a major life activity will obviously be broader than captured by prior measures, since "substantial" no longer means "severe" or "significantly restricted," major life activities now include "major bodily functions," the ameliorative effects of mitigating measures (other than ordinary eyeglasses or contact lenses) are disregarded, and conditions that are episodic or in remission are substantially limiting if they would be when active. Based on the available data, it is impossible to determine with precision how many individuals have impairments that will meet the current definition of substantially limiting a major life activity or a record thereof. We do know, however, that, at a minimum, this group should easily be concluded to include individuals with the conditions listed in § 1630.2(j)(3)(iii) of the final regulations—including autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, and a variety of mental impairments.

While it is true that, prior to the Amendments Act, many of these individuals were assumed to be covered under the law by their employers, the reality was that large numbers of individuals with these conditions were considered by the courts not to have disabilities, based on an individualized assessment of how well the individuals were managing with their impairments, taking into account mitigating measures. Thus, for purposes of this regulatory assessment, we consider individuals with all of these impairments to be individuals whose coverage has now been clarified by the Amendments Act.

By contrast, we are not counting individuals with certain conditions also listed in § 1630.2(j)(3)(iii) of the final regulations—mobility impairments requiring use of a wheelchair, blindness, deafness, and intellectual disabilities—as individuals whose coverage has now been clarified by the Amendments Act since, notwithstanding some exceptions, courts consistently found such individuals to be covered under the ADA even prior to the Amendments Act.

Thus, we use as a starting point the data reported by government agencies and various organizations on the number of individuals in the United States with autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, and a variety of mental impairments.[7] Adding these admittedly disparate and potentially overlapping numbers (and acknowledging that some of these estimates include children and are not restricted by employment status), we can assume a rough estimate of the number of individuals with these impairments who would be found substantially limited in a major life activity as a result of the Amendments Act, as follows:

—Autism—Approximately 1.5 million individuals in the United States are affected by autism.[8]

—Multiple Sclerosis—Approximately 400,000 Americans have multiple sclerosis according to the National Multiple Sclerosis Society.[9]

—Muscular Dystrophy—Approximately 250,000 Americans have muscular dystrophy according to the Muscular Dystrophy Association.[10]

—Cancer—In 2007, approximately 11,714,000 individuals were living with cancer in the United States.[11]

—Diabetes—An estimated 18.8 million adults in the United States have diabetes according to the CDC.[12]

—Epilepsy—Approximately 3 million Americans [13] (or subtracting approximately 326,000 schoolchildren under 15, about 2.6 million people 15 or over) have epilepsy, according to the Epilepsy Foundation website, and an estimated 2 million people have epilepsy, according to the CDC.

—Cerebral Palsy—Between 1.5 and 2 million children and adults have cerebral palsy in the United States according to the United Cerebral Palsy Research and Educational Foundation.[14]

—HIV Infection—The CDC estimates that more than 1.1 million Americans are living with HIV infection.[15]

—Mental Disabilities—Approximately 21 million individuals (6% or 1 in 17 Americans) have a serious mental illness according to the National Alliance on Mental Illness website (citing National Institute of Mental Health reports).[16]

Thus, based on this data, the number of individuals with the impairments cited in § 1630.2(j)(3(iii) could be at least 60 million. In addition, we know that people with many other

[7] We note that this approach was used by one of the comments submitted by an employer association.

[8] *See* "What is Autism?" *http://www.autismspeaks.org/whatisit/index.php* (last visited Mar. 1, 2011); *see also* Centers for Disease Control, "Prevalence of the Autism Spectrum Disorders (ASDs) in Multiple Areas of the United States, 2000 and 2002," available at *http://www.cdc.gov/ncbddd/autism/documents/AutismCommunityReport.pdf* (various studies regarding prevalence in children).

[9] *See* "Who Gets MS?" *http://www.nationalmssociety.org/about-multiple-sclerosis/what-we-know-about-ms/who-gets-ms/index.aspx* (last visited Mar. 1, 2011).

[10] *See* "Answers to Frequently Asked Questions," *http://www.mda.org/news/080804telethon_basic_info.html* (last visited Mar. 1, 2011).

[11] *See* "Cancer Prevalence: How Many People Have Cancer?" *http://www.cancer.org/cancer/cancerbasics/cancer-prevalence* (last visited Mar. 1, 2011).

[12] *See* "2011 National Diabetes Fact Sheet" (released Jan. 26, 2011), *http://www.diabetes.org/diabetes-basics/diabetes-statistics/* (last visited Mar. 1, 2011).

[13] *See* "Epilepsy and Seizure Statistics," *http://www.epilepsyfoundation.org/about/statistics.cfm* (last visited Mar. 1, 2011); CDC, Epilepsy "Data and Statistics," *http://www.cdc.gov/Epilepsy/.*

[14] *See* "Cerebral Palsy Fact Sheet," *http://www.ucp.org/uploads/cp_fact_sheet.pdf* (last visited Mar. 1, 2011).

[15] *See* "HIV in the United States," *http://www.cdc.gov/hiv/topics/surveillance/resources/factsheets/us_overview.htm* (last visited Mar. 1, 2011).

[16] "What is Mental Illness: Mental Illness Facts," *http://www.nami.org/template.cfm?section=About_Mental_Illness* (last visited Mar. 1, 2011).

impairments will virtually always be covered under the amended ADA definition of an impairment that substantially limits a major life activity or record thereof.

We recognize that the above figures on the prevalence of § 1630.2(j)(3)(iii) impairments are over-inclusive as a measure of the potential number of workforce participants with these impairments, since in some instances they include people of all ages and those who are not in the labor force. Therefore, we must also identify how many of these individuals are currently participating in the labor force.

Again, we are faced with significant limitations in the data available to us. The newest data released in January 2011 by the Bureau of Labor Statistics (BLS) estimates that 20 percent of people with disabilities age 16 and older participate in the labor force and, of those, 13.6 percent are considered to be unemployed.[17] But the BLS uses a functional limitation analysis to determine who has a disability which, as we have explained above, is significantly different from the definition of disability under the ADA as amended. Hence, we must assume this percentage is extremely under-inclusive. The BLS data estimates that the labor force participation rate for all civilian non-institutionalized people 16 and older (including people with and without disabilities) is 64 percent. We can thus assume that somewhere between 20 and 64 percent of individuals with impairments identified in § 1630.2(j)(3)(iii) will be participating in the labor force.

Using the 60 million figure, if we assume 20% of individuals with impairments identified in § 1630.2(j)(3)(iii) of the final regulations are participating in the labor force, then, considering those impairments alone, approximately 12 million individuals whose coverage is now clarified under the ADA are in the labor force (20% times 60 million). If we assume 64% of individuals with these disabilities are in the labor force, then the number of labor force participants whose coverage is clarified under the ADA is approximately 38.4 million.

[17] Participants in the labor force include individuals who currently have a job or are actively looking for one. U.S. Department of Labor, Office of Disability Employment Policy, Disability Employment Statistics Q&A, *http://www.dol.gov/odep/categories/research/bls.htm.*

B. Estimated Increase in Reasonable Accommodation Requests and Costs Attributable to the ADAAA and the Final Regulations

(1) Summary of Preliminary Analysis

As noted above, our preliminary analysis had concluded there would be an additional one million people with disabilities covered under the ADA, as amended. The preliminary analysis then attempted to estimate the subset of these million workers who would actually need reasonable accommodations, relying on a study by Craig Zwerling *et al., Workplace Accommodations for People with Disabilities: National Health Interview Survey Disability Supplement, 1994–1995,* 45 J. Occupational & Envtl. Med. 517 (2003). According to the Zwerling et. al study, 16% of employees with impairments or functional limitations surveyed said they need one of 17 listed accommodations. We assumed, therefore, using the 16% taken from the Zwerling study, that 16% of the one million workers whom we identified would also need accommodations, and that the resulting 160,000 requests would occur over a period of five years.

With regard to the potential costs of accommodations, the preliminary analysis set forth a review of the data from a series of studies providing a wide range of estimates of the mean and median costs of reasonable accommodation. The means cited in the data ranged from as low as $45 to as high as $1,434, based on a variety of studies done by academic and private researchers as well as the Job Accommodation Network (JAN). The $45 mean direct cost of accommodation was reported in a study (Helen Schartz *et al., Workplace Accommodations: Evidence-Based Outcomes* 27 Work 345 (2006)) examining the costs and benefits of providing reasonable accommodations, using data from an examination of costs at a major retailer from 1978 to 1997 (P. D. Blanck, *The Economics of the Employment Provisions of the Americans with Disabilities Act: Part I—Workplace Accommodations,* 46 *DePaul L. Rev.* 877 (1997)). The $1,434 mean cost of accommodation cited in the preliminary analysis was derived from data reviewed in JAN's January 2009 issue of its periodically updated study entitled "Workplace Accommodations: Low Cost, High Impact," which used 2008 data. The most recent JAN study, issued September 1, 2010, reported a mean accommodation cost of $1,183, based on 2009 data.

Using estimates of both the mean and median cost of accommodations, the preliminary analysis estimated that the ADA Amendments Act and these regulations would result in increased costs of reasonable accommodation of from $19,000,000 to $38,000,000 annually.

(2) Comments on Preliminary Analysis

The Commission received a number of public comments from employer associations arguing that because we had underestimated the incremental increase in the number of individuals with disabilities, we had also necessarily underestimated the number of additional requests for accommodation that could be attributable to the Amendments Act and the final regulations. Thus, one commenter recommended using a figure of 20% rather than 13% to represent the number of individuals with just those impairments identified in NPRM § 1630.2(j)(5) and then assumed that the percentage of those individuals who would request an accommodation would be 49%. That commenter thus concluded that a total of 576,000 individuals covered under § 1630.2(j)(5) would request a reasonable accommodation. This commenter also noted that even this figure would likely be too low because workers may move from job to job and renew accommodation requests, or a worker might need more than one accommodation.

The Commission also received comments from employers on the estimated costs of accommodations attributable to the Amendments Act and the regulations, primarily contending:

—The specific data on accommodation costs cited by the Commission in the preliminary analysis was too low (one employer association asserted that the cost will be at least $305.7 million for the first year, with administrative costs likely to exceed $101.9 million per year on a recurring basis; a state government entity commented that the Commission should take into account additional administrative costs employers may bear in order to comply, but did not attempt to estimate these additional costs);
—Each additional accommodation request will affect an employer's ability to cope with the overall number of requests; and
—The undue hardship defense is insufficient to address the financial concerns of small employers.

By contrast, disability rights groups asserted that even if the Commission's estimate of 160,000 additional workers who would request accommodations as a result of the ADA Amendments Act

provided an outer estimate of the number of affected workers, it was too high of a number to gauge the impact of the Amendments Act, in part because the Amendments Act affected those workers whom Congress had always intended to be covered by the ADA and because many employers were treating them as covered.

With regard to the costs of accommodations, a number of comments from academics and disability and civil rights organizations concurred with our preliminary conclusion that the cost would be below $100 million and that no economic impact analysis was required or feasible, and/or argued that the Commission's preliminary analysis had overstated the potential economic impact. Specifically, they argued that the Commission's rough estimates of the number and cost of accommodation requests were speculative and were unnecessary to conclude that the Act's costs are less than $100 million, since available research overwhelmingly demonstrates that accommodation costs are modest, and because neither the Amendments Act nor the proposed regulations change the basic structure of the original ADA. They also argued that the Commission's method of interpreting certain reasonable accommodation data resulted in overestimation of costs; that many accommodations for specific types of impairments have no or very little cost; and that over time, ongoing medical and technological advances can be reasonably expected to reduce both existing and new accommodation costs associated with the ADA or the Amendments Act.

Professor Peter Blanck of the Burton Blatt Institute at Syracuse University, a co-author of the 2006 "*Workplace Accommodations: Evidence-Based Outcomes*" study, filed public comments offering a number of clarifications specifically regarding citation to his study's data, and arguing that the Commission had overstated the cost of accommodations, because the preliminary analysis used a "mean" (or average, calculated by adding all values in a dataset and dividing by the number of points in the dataset), rather than a "median" (the middle point in a dataset).

Professor Blanck considered the median a better measure of the cost of accommodations because so many accommodations have no cost. He pointed out that based on his research, 49.4% of accommodations had zero direct costs. For the 50.6% of accommodations with a cost greater than zero, the median cost in the first calendar year was $600. Professor Blanck further found that for all accommodations, including those with a zero cost, the median cost of accommodations was found to be $25.

Of key importance, no public comments contradicted the Commission's observation in the preliminary analysis that there is a paucity of data on the costs of providing reasonable accommodation, and that much of the existing data is obtained either through limited sample surveys or through surveys that collect limited information. While some employer groups disputed the Commission's cost estimates, none cited any research or studies on actual accommodation costs.

(3) Revised Analysis

Our revised analysis of potential costs for additional accommodations begins with a revised estimate of the number of new accommodation requests, based on the upward adjustment of the number of people with disabilities whose coverage is clarified under the Amendments Act. As we note above, that range is 12 million to 38.4 million people.

(a) Estimated Number of New Accommodation Requests

Estimating the increase in expected requests for reasonable accommodations attributable to the Amendments Act and the final rule is difficult because it requires assuming that some number of individuals with disabilities will now perceive themselves as protected by the law and hence ask for accommodation, but had not previously assumed they were covered and therefore had not asked for accommodations. In reality, individuals with disabilities such as epilepsy, diabetes, cancer, and HIV infection may have considered themselves, and may have been treated by their employers as, individuals who could ask for accommodations such as flexible scheduling or time off. Moreover, in many cases, such accommodations may have been requested and provided without anyone in the process even considering such workplace changes as being required reasonable accommodations under the ADA.

Recognizing that it is impossible to determine with precision the number of individuals in the labor force whose coverage is now clarified under the law and who are likely to request and require reasonable accommodations as a result of that increased clarity, we have tried to determine the number of such individuals by taking the estimated number of labor force participants whose coverage has been clarified and multiplying it by the percentage of employees who report needing accommodations.

According to the Zwerling *et al.* study cited in our preliminary analysis, 16% of employees with impairments or functional limitations surveyed said they needed one of 17 listed accommodations. *Workplace Accommodations for People with Disabilities: National Health Interview Survey Disability Supplement, 1994–1995,* 45 J. Occupational & Envtl. Med. 517 (2003)). This 16% figure may be an overestimate of the percentage of those employees whose coverage has been clarified by the Amendments Act who will actually need accommodations, since of the 17 accommodations listed in the study, a number of them would more likely have been needed by individuals whose coverage was not questioned prior to the Amendments Act. For example, these accommodations include accessible restrooms, automatic doors, installation of a ramp or other means of physical access, and the provision of sign language interpreters or readers. These are types of accommodations that would apply specifically to individuals who were clearly covered under the ADA, even prior to the Amendments Act. Only 10.2% of the employees surveyed asked for accommodations such as break times, reduced hours, or job redesign, which are the more likely accommodations to be requested by those individuals whose coverage has now been clarified. Nevertheless, because the Zwerling study surveyed a limited range of people with disabilities, we will use the full 16% figure.

Applying the 16% figure to represent the percentage of individuals whose coverage has been clarified and who would need reasonable accommodations, the resulting increase in reasonable accommodations requested and required as a result of the Amendments Act could range from approximately 2 million (assuming 12 million labor force participants) to 6.1 million (assuming 38.4 million labor force participants).

(b) Factors Bearing on Reasonable Accommodation Costs

After fully considering the preliminary analysis and the public comments, and after further consideration of the issues, the Commission is persuaded of the following facts concerning the costs of accommodations:

—Of those reasonable accommodations requested and required, only a subset will have any costs associated with them. The studies show that about half of accommodations have zero or no cost, and had findings regarding

the mean cost ranging from $45 and $1,183. But most, if not all, of these studies have included accommodations for people who use wheelchairs, who are deaf, or who are blind. These tend to be the most expensive accommodations (e.g., physical access changes such as ramps, automatic doors, or accessible bathrooms; sign language interpreters and readers; Braille and/or computer technology for reading). Passage of the Amendments Act and promulgation of these regulations do not affect these individuals or render employers newly responsible for providing such accommodations, since there was never any dispute, even prior to enactment of the Amendments Act, that people with these kinds of impairments met the definition of disability. Therefore, any estimate of newly imposed costs of accommodations should generally exclude these types of higher-cost accommodations.

—To the extent the calculation of any mean accommodation cost is derived from data that includes accommodations that are purchased for a one-time cost but will be used over a period of years once owned by the employer (either for that employee's tenure or for future employees), the annual cost is actually much lower than the one-time cost. For example, physical renovations and accessibility measures, equipment, furniture, or technology, among other accommodations, may be used over a period of many years at no additional cost to the employer.

—A small percentage of people whose coverage has been clarified may need some physical modifications to their workspace—e.g., the person with mild cerebral palsy who might need voice recognition software for difficulty with keyboarding, or the person whose multiple sclerosis affects vision who needs a large computer screen.

—Most of the people who will benefit from the amended law and regulations are people with conditions like epilepsy, diabetes, cancer, HIV infection, and a range of mental disabilities. The types of accommodation these individuals will most commonly need are changes in schedule (arrival/departure times or break times), swapping of marginal functions, the ability to telework, policy modifications (e.g., altering for an individual with a disability when or how a task is performed, or making other types of exceptions to generally-applicable workplace procedures), reassignment to a vacant position for which the individual is qualified, time off for treatment or recuperation, or other similar accommodations.

—Many of these accommodations will not require significant financial outlays. Some accommodations, such as revising start and end times, allowing employees to make up hours missed from work, and creating compressed workweek schedules, may result in administrative or other indirect costs. However, they may also result in cost savings through increased retention, engagement, and productivity. Other accommodations, such as providing special equipment needed to work from home, will have costs, but might also result in cost savings (e.g., reduced transportation costs, environmental benefits, etc.).

—Time off, both intermittent and extended, may have attendant costs, such as temporary replacement costs and potential lost productivity. But these, too, may be offset by increased retention and decreased training costs for new employees.

—With respect to those individuals whose coverage has been clarified and who both request and need accommodation, employers will sometimes provide whatever is requested based on existing employer policies and procedures (e.g., use of accrued annual or sick leave or employer unpaid leave policies, employer short- or long-term disability benefits, employer flexible schedule options guaranteed by a collective bargaining agreement, voluntary transfer programs, or "early return to work" programs), or under another statute (e.g., the Family and Medical Leave Act or workers' compensation laws).

(c) Calculation of Mean Costs of Accommodations Derived From Studies

We disagree with Professor Blanck's observation that the median cost is the appropriate value for this analysis because this analysis seeks to estimate the total cost of new accommodations across the entire economy resulting from the Amendments Act and final rule. Using the median value in this case would not capture the total cost to the nation's economy.

For that reason, we will rely on the range of mean costs of accommodations derived from various studies and will attempt to make a reasonable estimation of the likely mean cost of accommodation for those employees whose coverage has been clarified as a result of the Amendments Act. In so doing, we again recognize that references to this data must be qualified by (1) the fact that high cost outlier accommodations are not ones likely to be requested by those whose coverage has been clarified by the Amendments Act and the final rule, and (2) the fact that reasonable accommodations are not needed, requested by, or provided for all individuals with disabilities.

The Job Accommodation Network (JAN) conducts an ongoing evaluation of employers that includes accommodation costs, using a questionnaire to collect data from employers who have consulted JAN for advice on providing reasonable accommodation. As noted above, the most recent JAN study (Workplace Accommodations: Low Cost, High Impact (JAN 2009 Data Analysis) (Sept. 1, 2010)) found that the median cost of reasonable accommodations that had more than a zero cost reported by JAN clients was $600, and the mean cost was $1,183.[18] JAN's cumulative data from 2004–2009 shows that employers in their ongoing study report that a high percentage (56%) of accommodations cost nothing to provide.

According to JAN,[19] its calculation of the $1,183 mean cost of accommodation was derived from a survey of 424 employers. Two of those employers reported outlying costs of $100,000 each, in both cases for the design and purchase of information system databases for proprietary information that would be accessible to employees with vision impairments. Such employees would have likely been covered by the ADA prior to the Amendments Act, and the type of higher-cost technological accommodation at issue is not the type of accommodation that will likely be needed by most of those whose coverage has been clarified by virtue of the Amendments Act and final regulations. Moreover, in each case, the database was being developed for business reasons, and not specifically as an accommodation.[20]

According to JAN, if these two outlier accommodations are deleted from the

[18] Information provided to the EEOC by Beth Loy, Ph.D., Job Accommodation Network.

[19] *Id.*

[20] *Id.* The survey data received by JAN did not indicate whether the $100,000 reported cost was the total cost of the database or the added cost of accessibility. Significantly, one of these employers is a federal agency that was required to purchase an accessible database under section 508 of the Rehabilitation Act of 1973, as amended, so would have had to do so anyway. Therefore, it is not clear that it would be appropriate to consider this a cost of accommodating a single employee under section 501 of the Rehabilitation Act, as amended. The other employer was a federal contractor, and may therefore have had obligations under its contract and/or section 503 of the Rehabilitation Act, as amended, to include accessible features. *Id.*

data set, the mean cost of accommodation based on the remaining 422 reported accommodations in the survey drops to $715.[21] Even this figure may overestimate the mean cost of accommodations needed for those whose coverage has been clarified by the Amendments Act, most of which we believe will have less significant costs. Nonetheless, we will use $715 as a starting point for calculating the annual mean cost of accommodations attributable to the changes in the definition of a substantially limiting impairment.

The mean cost of $715 represents the average one-time cost of providing a reasonable accommodation. However, JAN reports that many of these accommodations reported in the study involved ones that are then used by the employee (or additional employees) on an ongoing basis, in many cases presumably for a period of years. These included items such as software, chairs, desks, stools, headsets, keyboards, computer mice, sound absorption panels, lifting devices, and carts.[22] Given the nature of these items, their useful life, and ever-advancing technology, we assume for purposes of this analysis a useful life of five years for these items. If those accommodations that can be used on an ongoing basis are used for five years, this would reduce the mean annual cost to one-fifth of $715 (or $143, which we will round to $150 for purposes of this analysis) with respect to those accommodations. In addition, the mean of $715 includes one-time costs of more expensive accommodations such as equipment, technology, and physical workplace accessibility for individuals who were already covered, whereas we believe the cost of the majority of accommodations associated with those whose coverage is clarified by the Amendments Act will be lower. Therefore, any estimate of the mean cost of accommodations overall may exaggerate the cost of accommodations for such individuals. Thus, for purposes of considering the annual impact pursuant to EO 12866, we believe it is appropriate to use the estimated lower mean of $150.

(d) Accommodation Cost Scenarios

Using our estimates above regarding the possible range of the number of individuals whose coverage is clarified under the definition of a substantially limiting impairment or record thereof and who are likely to request and require accommodation, we can project the following estimates of the likely incremental cost of providing reasonable accommodation attributable to the Amendments Act and the final rule, using a $150 mean annual cost of accommodation. Since we would not expect all of these new accommodation requests to be made in a single year, we will assume they will be made over a period of five years, with estimated costs as follows, using the above-discussed estimate of the incremental increase in reasonable accommodations requested and required as a result of the Amendments as ranging from 2 million to 6.1 million:

400,000 new accommodations annually (2 million over 5 years) × $150 = $60 million annually

1.2 million new accommodations annually (6.1 million over 5 years) × $150 = $183 million annually

Thus, the lower-bound estimated cost of the incremental increase in accommodations attributable to the Amendments Act and the final regulations would be $60 million annually, and the higher-bound estimated cost would be $183 million. The Commission recognizes that the range of cost estimates is quite large. However, given the lack of available data and the limitations in existing data, the resultant high level of uncertainty about the number of individuals whose coverage is clarified under the Amendments Act, the uncertainty about the number of such individuals who would be newly asking for accommodations, and the uncertainty about the actual mean cost of the accommodations that might be requested by these individuals, we are not able to provide more precise estimates of the costs of new accommodations attributable to the ADA Amendments Act and the final rule.

C. Estimated Increase in Administrative and Legal Costs Attributable to the ADAAA and the Final Regulations

(1) Summary of Preliminary Analysis

In the preliminary analysis, the Commission posited that administrative costs of complying with the ADA Amendments Act might be estimated at $681 in a human resource manager's time,[23] plus the fees, if any, charged for any training course attended.

With respect to training costs, we noted that the EEOC provides a large number of free outreach presentations for employers, human resource managers, and their counsel, as well as fee-based training sessions offered at approximately $350. Therefore, the preliminary analysis offered a rough estimate of these administrative costs, even if fee-based training were sought, of $1,031. The preliminary analysis assumed that these figures will underestimate costs at large firms but will overestimate costs at small firms and at firms that do not have to alter their policies. This would have resulted in a one time cost of approximately $70 million, although the Commission was unable to identify empirical research to support these very rough estimates. This figure assumed firms with fewer than 150 employees would incur no administrative costs from this rule. The preliminary analysis further assumed that smaller entities are less likely to have detailed reasonable accommodation procedures containing information relating to the definition of disability that must be revised or deleted. We posited in our preliminary analysis that larger firms, such as the 18,000 firms with more than 500 employees, would be more likely to have formal procedures that may need to be revised.[24]

The preliminary analysis also found that while there may be additional costs associated with processing and adjudicating additional requests for accommodation, these costs may be offset in part by the fact that application of the revised definition of "disability" will decrease the time spent processing accommodation requests generally. There were no findings or assumptions regarding increased or decreased litigation costs in the preliminary analysis.

(2) Comments on Preliminary Analysis

Various employer groups commented that the definitional changes will cause confusion and litigation, with associated costs, and that the Commission's preliminary estimate of training and related costs was not based on sufficient research. Specifically, they commented that the Commission had under-estimated the costs that have been or will be incurred by employers to update internal policies and procedures to reflect the broader definition of disability and to train personnel to ensure appropriate compliance with the ADAAA and the final regulations, and that the Commission should have taken into account not just salaries but also benefits paid to such individuals to represent the cost of time spent on such training. They also asserted that there

[21] *Id.*

[22] *Id.*

[23] Occupational Outlook Handbook, 2008–09 Edition, *http://stats.bls.gov/OCO/OCOS021.htm* (downloaded September 2, 2009).

[24] *http://www.sba.gov/advo/research/us_06ss.pdf* (downloaded Sept. 2, 2009).

would be recurring costs of one-third of first year costs (which they estimated would be more than $305 million for all employers).

By contrast, other commenters asserted that the Commission's preliminary analysis overestimated administrative costs because it failed to account for administrative benefits. They argued that costs associated with needed updates to employer policies and procedures will also have the benefit of simplifying and streamlining those policies and procedures and the coverage determination part of the interactive process.

(3) Revised Analysis of Administrative Costs

The Commission concludes that it inappropriately assessed the additional training costs that would be incurred by employers with 150 or more employees. Employers of this size are likely to receive training on both the ADAAA and the final regulations as part of fee-based or free periodic update training on EEO topics that they otherwise regularly attend. Our preliminary analysis did not account for this fact, but rather assumed that most or all such employers would attend a training on the regulations, at a cost of $350.00, that they would not otherwise have attended.

Even if some larger employers decide to attend an EEO training in a particular year because of the issuance of the final regulations (when they otherwise would not have attended such a training), information about the final regulations is likely to account for only a fraction of the training (typically the EEOC's one- and two-day training sessions involve multiple topics). Therefore, only a fraction of the $350.00 we assumed an employer would spend on training can be said to be a cost resulting from the ADAAA or the final regulations.

The Commission also concludes that it should have accounted for administrative costs borne by employers with 15 to 149 employees. These costs are limited, however, by the fact that such businesses generally tend to lack formal reasonable accommodation policies and usually avail themselves of free resources (e.g., guidance and technical assistance documents on the EEOC's Web site) in response to particular issues that arise, rather than receiving formal training on a regular basis. Additionally, smaller employers are called upon to process far fewer reasonable accommodation requests and may more easily be able to establish undue hardship, even where an accommodation is requested by someone whose coverage has been clarified under the ADAAA.

We also note that emphasizing the anticipated "difference" in compliance costs between smaller and larger entities may overlook some specific benefits incurred by smaller entities. For example, the EEOC makes available more free outreach and training materials to employers than it does paid trainings. Moreover, as noted above, smaller entities are less likely to have detailed reasonable accommodation procedures containing information relating to the definition of disability that must be revised or deleted. The EEOC expects to issue new or revised materials for small businesses as part of revisions made to all of our ADA publications, which include dozens of enforcement guidances and technical assistance documents, some of which are specifically geared toward small business (e.g., "The ADA: A Primer for Small Business," *http://www.eeoc.gov/ada/adahandbook.html*).

Notwithstanding the one-time costs to some employers associated with making and implementing those revisions to their internal procedures, the Commission notes that there will be significant time savings that will be achieved on an ongoing basis once employers begin utilizing their newly simplified procedures. Additionally, after initial revision, subsequent updates will not be needed more frequently than they were prior to the ADAAA and final regulations, and there is no reason to anticipate recurring costs of any significance.

(4) Analysis of Legal Costs

It is difficult to predict either the increase or decrease in legal costs as a result of the Amendments Act and the final rule.

We anticipate that the legal fees and litigation costs regarding whether an individual is a person with a disability within the meaning of the ADA will significantly decrease in light of the ADAAA and its mandate that coverage be construed broadly. However, in those cases where courts would previously have declined to reach the merits of ADA claims based on a determination that a plaintiff did not have a disability, legal fees and litigation costs regarding the merits of the case—e.g., whether an individual was subject to discrimination on the basis of his or her disability, whether an individual with a disability is "otherwise qualified," whether an accommodation constitutes an "undue hardship," etc.—might increase as a result of more cases proceeding to the merits.

In addition, we anticipate that in light of the ADAAA, including the expanded "regarded as" definition of disability contained in the ADAAA, there will be an increase in the number of EEOC charges and lawsuits filed. In particular, we anticipate that more individuals with disabilities might file charges with the Commission. Moreover, we anticipate that plaintiffs' lawyers, who previously might not have filed an ADA lawsuit because they believed that an employee would not be covered under the Supreme Court's cramped reading of the term "disability," will now be more inclined to file lawsuits in cases where the lawyers believe that discrimination on the basis of disability—broadly defined—has occurred. As a result, we believe that there may be additional legal fees and litigation costs associated with bringing and defending these claims, but we have no basis on which to estimate what those costs might be.

There will be costs to the Commission primarily for increased charge workload. The Congressional Budget Office (CBO) estimated these costs based on H.R. 3195, a prior version of the legislation that became the ADAAA. The CBO found that the bill would increase this workload by no more than 10 percent in most years, or roughly 2,000 charges annually. Based on the EEOC staffing levels needed to handle the agency's current caseload, CBO expected that implementing H.R. 3195 would require 50 to 60 additional employees. CBO estimated that the costs to hire those new employees would reach $5 million by fiscal year 2010, subject to appropriation of the necessary amounts. (H.R. 3195, ADA Amendments Act of 2008, Congressional Budget Office, June 23, 2008, at 2.) Nevertheless, we note that although charge data indicate an increase in ADA charges over the period of time since the Amendments Act became effective, this increase may be attributable to factors unrelated to the change in the ADA definition of disability. For example, government research has found a higher incidence of termination of individuals with disabilities than those without disabilities during economic downturns. Kaye, H. Steven, "The Impact of the 2007–09 Recession on Workers with Disabilities," Monthly Labor Review Online (U.S. Dept. of Labor Bureau of Labor Statistics, Oct. 2010, Vol. 133, No. 10), *http://www.bls.gov/opub/mlr/2010/10/art2exc.htm* (last visited Mar. 1, 2010). We also note that ADA charges were steadily rising over a period of years even prior to enactment of the ADA Amendments Act. To the extent that factors other than the Amendments

Act explain or partially explain the increase in ADA charges since the Act took effect, the increase in charges would not be attributable to the Amendments Act or the final regulations.

In sum, while there might be a potential increase in legal fees attributable to the ADAAA or the final regulations, we are unable to attach any dollar figure to what that increase might be.

II. Estimated Benefits Attributable to the ADAAA and the Final Regulations

A. Benefits of Accommodations Attributable to the ADAAA and the Final Regulations

(1) Summary of Preliminary Analysis

While the preliminary impact analysis made reference to various benefits of the rule in the discussion of assumptions and its review of various projected costs, it did not separately itemize, review, or quantify these benefits.

(2) Comments on Preliminary Analysis

Commenters said that the EEOC did not adequately account for the benefits of reasonable accommodation. In particular, Professor Peter Blanck submitted seven of his studies and argued that "research shows accommodations yield measurable benefits with economic value that should be deducted from the cited costs to yield a net value." [25]

Professor Blanck states that "research shows employees who receive accommodations are more productive and valued members of their organizations." He asserts that the contributions of accommodated employees with disabilities show measurable economic value for organizations, and that the analysis of economic impact must therefore take into account both direct benefits and indirect benefits as a potential offset to any potential accommodation costs reviewed in the preliminary analysis or cited by the employer groups. Examples of direct benefits reported by employers in these research studies include the ability to retain, hire, and promote qualified personnel; increased employee attendance (productivity); avoidance of costs associated with underperformance, injury, and turnover; benefits from savings in workers' compensation and related insurance; and increased diversity. The authors also note a number of indirect benefits: Improved interactions with co-workers; increased company morale, productivity, and profitability; improved interactions with customers; increased workplace safety; better overall company attendance; and increased customer base.

Professor Blanck's statement is that based on the studies he has reviewed and submitted, the quantified net benefits of providing accommodations are a significant offset to any cost incurred and, indeed, result in a net value. For example, he summarized the specific accommodation benefit data found in the 2006 "Workplace Accommodations: Evidence-Based Outcomes" study, as follows:

—Monetary estimates of direct benefits were provided by 95 respondents and are a median of $1,000 total when zero benefit estimates are included. When zero benefit estimates are excluded, the median benefit is $5,500 (based on 62 respondents). Some respondents were unable to provide exact estimates, but they could provide estimates within ranges (of 75 respondents, 66.4% reported direct benefits greater than $1,000, 16.1% reported direct benefits between $500 and $1,000, 10.2% reported direct benefits between $100 and $500, and the remaining 7.3% reported direct benefits less than $100).

—Respondents were asked to estimate the value of indirect benefits (e.g., improved interactions at work, improved morale, and increased company productivity, safety, attendance, and profitability, etc.). Out of 77 respondents who were able to do so, 57.1% reported no indirect benefits, but 33 respondents did report indirect benefits greater than zero, at a median value of $1,000. An additional 58 respondents were able to estimate the value of indirect benefits categorically in ranges. When combined with the 33 who reported exact estimates, 48.4% reported indirect benefits greater than $1,000, 18.7% reported a value between $500 and $1,000, 19.8% reported a value between $100 and $500, and the remaining 13.2% reported a value less than $100.

—This study reports conservative estimates of the Calendar Year Net Benefit by obtaining the difference between the First Calendar Year Direct Cost and the Direct Benefit estimates. This comparison was made for 87 respondents; the mean benefit was $11,335 and the median was $1,000. For 59.8% the direct benefits associated with providing the accommodation more than offset the direct costs, and for 21.8% benefits and costs equaled each other (the remaining 18.4% reported costs that were greater than benefits).

(3) Conclusions Regarding Benefits of Accommodations Attributable to the ADAAA and the Final Regulations

We agree with the commenters who noted the existence of surveys documenting both tangible and intangible benefits through the provision of reasonable accommodations. For example, in its most recent survey of employers, the Job Accommodation Network found that the following percentage of respondents reported the following benefits from accommodations they had provided to employees with disabilities:

	Percent
Direct benefits:	
Company retained a valued employee	89
Increased the employee's productivity	71

[25] Blanck, P.D. (1994), *Communicating the Americans with Disabilities Act: Transcending Compliance—A case report on Sears Roebuck & Co.,* The Annenberg Washington Program. (also in J. Burns (Ed.), *Driving Down Health Care Costs,* at 209–241, New York, Panel Publishers; Blanck, P.D. (1996); *Communicating the Americans with Disabilities Act: Transcending Compliance—1996: Follow-up report on Sears, Roebuck & Co.* Washington, D.C.: The Annenberg Washington Program. (also published as: Blanck, P.D. (1996), *Transcending Title I of the Americans with Disabilities Act: A Case Report on Sears, Roebuck & Co.,* Mental & Physical Disability Law Reporter, 20(2), 278–86) (mean cost was $45.20 on 71 accommodations made at Sears between 1993–1995)); Blanck, P.D. & Steele, P. (1998), *The Emerging Role of the Staffing Industry in the Employment of Persons with Disabilities—A Case Report on Manpower Inc.* Iowa City, IA: Iowa CEO and Law, Health Policy and Disability Center (data from 10 no-cost case studies of accommodation by Manpower); Hendricks, D.J., Batiste, L., Hirsh, A., Dowler, D. Schartz, H., & Blanck, P. (Fall 2005), *Cost and Effectiveness of Accommodations in the Workplace: Preliminary Results of a Nationwide Study.* Disability Studies Quarterly, Part I, 25(4); Schartz, H., Schartz, K., Hendricks, D.J., & Blanck, P. (2006), *Workplace Accommodations: Empirical Study of Current Employees,* Mississippi Law Journal, 75, 917–43 (for those employers providing monetary estimates of benefits of accommodation, 81.3% reported benefits that offset the costs; 61.3% reported benefits outweighing the cost, 20% reported benefits that equaled the costs, and the remaining 18.7% reported costs exceeding benefits); Schartz, H., Hendricks, D.J., & Blanck, P. (2006), *Workplace Accommodations: Evidence-Based Outcomes,* Work, 27, 345–354 (addressing "disability-related direct cost," the amount of direct cost that is more than the employer would have paid for an employee in same position without a disability); Schur, L., Kruse, D. Blasi, J, & Blanck, P. (2009), *Is Disability Disabling In All Workplaces?: Disability, Workplace Disparities, and Corporate Culture,* Industrial Relations, 48(3), 381–410, July (finding disability is linked to lower average pay, job security, training, and participation in decisions, and to more negative attitudes toward the job and company, but finding no disability "attitude gaps" in workplaces rated highly by all employees for fairness and responsiveness).

	Percent
Eliminated costs associated with training a new employee	60
Increased the employee's attendance	52
Increased diversity of the company	43
Saved workers' compensation or other insurance costs	39
Company hired a qualified person with a disability	14
Company promoted an employee	11
Indirect benefits:	
Improved interactions with co-workers	68
Increased overall company morale	62
Increased overall company productivity	59
Improved interactions with customers	47
Increased workplace safety	44
Increased overall company attendance	38
Increased profitability	32
Increased customer base	18

Job Accommodation Network (Original 2005, Updated 2007, Updated 2009, Updated 2010). *Workplace Accommodations: Low Cost, High Impact, http://AskJAN.org/media/LowCostHighImpact.doc* (last visited Mar. 1, 2011).

The JAN study did not attempt to attach numerical figures to the direct benefits noted in the survey. However, taking one of those benefits—increased retention of workers—the Commission notes that employers should experience cost savings by retaining rather than replacing a worker. According to data from the Society for Human Resource Management (SHRM), the average cost-per-hire for all industries in 2009 was $1,978. Society for Human Resource Management, *SHRM 2010 Customized Human Capital Benchmarking Report* (All Industries Survey) at 13 (2010). Such costs increase for knowledge based industries, such as high-tech where the cost-per-hire was $3,045. Id.; Society for Human Resource Management, *SHRM 2010 Customized Human Capital Benchmarking Report* (High Tech Industries Survey) at 13 (2010). In addition, the time-to-fill for positions in all industries was an average of 27 days, but time to fill for high-tech positions increased to an average of 35 days. Id.; All Industries Survey at 13.

In addition, although limited, the existing data shows that providing flexible work arrangements such as flexible scheduling and telecommuting reduces absenteeism, lowers turnover, improves the health of workers, and increases productivity. *See* Council of Economic Advisors, Work-Life Balance and the Economics of Workplace Flexibility (March 2010) (available at *http://www.whitehouse.gov/blog/2010/03/31/economics-workplace-flexibility*).

The Commission does not feel there is sufficient data to state unequivocally, as Professor Blank does, that there is always a net value to providing accommodations. However, it is apparent from surveys conducted of both employers and employees that there are significant direct and indirect benefits to providing accommodations that may potentially be commensurate with the costs.

The Commission also concludes that there are potential additional benefits regarding the provision of accommodations made by the ADAAA. Specifically:

—The changes made by the Amendments Act and the clarity regarding coverage provided by the Act and the final regulations should make the reasonable accommodation process simpler for employers. For example, to the extent employers may have spent time before reviewing medical records to determine whether a particular individual's diabetes or epilepsy satisfied the legal definition of a substantially limiting impairment, there may be a cost savings in terms of reduced time spent by front-line supervisors, managers, human resources staff, and even employees who request reasonable accommodation.

—The Amendments Act reverses at least three courts of appeals decisions that previously permitted individuals who were merely "regarded as" individuals with disabilities to be potentially entitled to reasonable accommodation. The Amendments Act and the regulations clearly provide that individuals covered only under the "regarded as" prong of the definition of disability will not be entitled to reasonable accommodation. This change benefits employers by both clarifying and limiting who is entitled to reasonable accommodations under the ADA.

B. Other Benefits Attributable to the ADAAA and the Final Regulations

Apart from specific benefits regarding the provision of accommodations, the Commission notes that a number of monetary and non-monetary benefits may result from the ADAAA and the final regulations, including but not limited to specifically the following:

(1) Efficiencies in Litigation

—The Amendments Act and final regulations will make it clearer to employers and employees what their rights and responsibilities are under the statute, thus decreasing the need for litigation regarding the definition of disability.

—To the extent that litigation remains unavoidable in certain circumstances, the Amendments Act and the final regulations reduce the need for costly experts to address "disability" and streamline the issues requiring judicial attention.

(2) Fuller Employment

—Fuller employment of individuals with disabilities will provide savings to the federal government and to employers by potentially moving individuals with disabilities into the workforce who otherwise are or would be collecting Social Security Disability Insurance (SSDI) from the government, or collecting short- or long-term disability payments through employer-sponsored insurance plans.

—Fuller employment of individuals with disabilities will stimulate the economy to the extent those individuals will have greater disposable income and enhance the number of taxpayers and resulting government revenue.

The Commission has not undertaken to quantify these benefits in monetary terms. However, we assume for purposes of our analysis that the sum total of these benefits will be significant.

(3) Non-discrimination and Other Intrinsic Benefits

The Commission also concludes that a wide range of qualitative, dignitary, and related intrinsic benefits must be considered. These benefits include the values identified in EO 13563, such as equity, human dignity, and fairness. Specifically, the qualitative benefits attributable to the ADA Amendments Act and the final rule include but are not limited to the following:

—Provision of reasonable accommodation to workers who would otherwise have been denied it benefits workers and potential workers with disabilities by diminishing discrimination against qualified individuals and by enabling them to reach their full potential. This protection against discrimination promotes human dignity and equity by enabling qualified workers to participate in the workforce.

—Provision of reasonable accommodation to workers who would otherwise have been denied it

reduces stigma, exclusion, and humiliation, and promotes self-respect.

—Interpreting and applying the ADA as amended will further integrate and promote contact with individuals with disabilities, yielding third-party benefits that include both (1) diminishing stereotypes often held by individuals without disabilities and (2) promoting design, availability, and awareness of accommodations that can have general usage benefits and also attitudinal benefits. *See* Elizabeth Emens, *Accommodating Integration,* 156 U. Pa. L. Rev. 839, 850–59 (2008) (explaining a wide range of potential third-party benefits that may arise from workplace accommodations).

—Provision of reasonable accommodation to workers who would otherwise have been denied it benefits both employers and coworkers in ways that may not be subject to monetary quantification, including increasing diversity, understanding, and fairness in the workplace.

—Provision of reasonable accommodation to workers who would otherwise have been denied it benefits workers in general and society at large by creating less discriminatory work environments.

Conclusion

In the foregoing final regulatory impact analysis, the Commission concludes that the approximate costs of reasonable accommodations attributable to the ADA Amendments Act and these regulations will range greatly and in some instances would exceed $100 million annually, depending on assumptions made about the number of individuals in the labor force whose coverage has been clarified under the ADAAA and the number of such individuals who will receive reasonable accommodation. We estimate that the lower bound annual incremental cost of accommodations would be approximately $60 million, assuming that 16% of 12 million individuals whose coverage has been clarified request reasonable accommodations over five years at a mean cost of $150. We also estimate that the upper bound annual incremental cost of accommodations would be approximately $183 million, assuming that 16% of 38.4 million individuals whose coverage has been clarified request reasonable accommodations over five years at a mean cost of $150. We do not believe that administrative costs will add significantly to the annual costs resulting from the final regulations, and we believe it is not possible to accurately estimate any decrease or increase in legal costs.

The Commission further concludes that the Amendments Act and the final regulations will have extensive quantitative and qualitative benefits for employers, government entities, and individuals with and without disabilities. Regardless of the number of accommodations provided to additional applicants or employees as a result of the Amendments Act and these regulations, the Commission believes that the resulting benefits will be significant and could be in excess of $100 million annually. Therefore, the rule will have a significant economic impact within the meaning of EO 12866. Consistent with Executive Order 13563, the Commission concludes that the benefits (quantitative and qualitative) of the rule justify the costs.

Unfunded Mandates Reform Act

The Commission notes that by its terms the Unfunded Mandates Reform Act does not apply to legislative or regulatory provisions that establish or enforce any "statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability." 2 U.S.C. 658a. Accordingly, it does not apply to this rulemaking.

Regulatory Flexibility Act

Title I of the ADA applies to all employers with 15 or more employees, approximately 822,000 of which are small firms (entities with 15–500 employees) according to data provided by the Small Business Administration Office of Advocacy. *See* Firm Size Data at *http://sba.gov/advo/research/data.html#us.* The rule is expected to apply uniformly to all such small businesses.

The Commission certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities because it imposes no reporting burdens and because of the no-cost and low-cost nature of the types of accommodations that most likely will be requested and required by those whose coverage has been clarified under the amended ADA's definition of an impairment that substantially limits a major life activity.[26]

In the public comments on the preliminary assessment, one employer organization submitted alternative estimates of the number of individuals who will be affected by the regulations, arguing that a final regulatory flexibility analysis is warranted, including alternatives to reduce costs. The organization estimated that 576,000 individuals will newly request reasonable accommodations due to the Amendments Act. Another employer organization suggested that the preliminary regulatory impact analysis use of the CPS–ASEC might have underestimated the number of people that would be considered to have a disability under these implementing regulations. For the reasons explained in the final regulatory impact analysis, the Commission has significantly revised upward its preliminary estimates of the number of individuals whose coverage has been clarified under the ADAAA and who may request and require accommodations, accounting for alternative sources of data cited by commenters and identified through the inter-agency review process under EO 12866. However, the Commission has also set forth in the final regulatory impact analysis its rationale for concluding that this incremental increase in reasonable accommodations will primarily entail accommodations with no or little costs.

No comments suggested regulatory alternatives that would be more suitable for small businesses. As described above, portions of the Commission's ADA regulations were rendered invalid by the changes Congress made to the ADA in enacting the Amendments Act, and the Commission therefore had no alternative but to conform its regulations to the changes Congress made in the statute to the definition of disability. Therefore, the rationale for this regulatory action is legislative direction. However, even absent this direction, the adopted course of action is the most appropriate one, and it is the Commission's conclusion that the title I

[26] This conclusion is consistent with the Commission's finding in the final regulatory impact analysis that the costs imposed by the Amendments Act and the final regulations may, depending on the data used, impose a cost in excess of $100 million annually for purposes of EO 12866. Unlike 12866, the Regulatory Flexibility Act requires a determination of whether a rule will have a "significant economic impact on a substantial number of small entities," which is not defined by a specific dollar threshold for purposes of the Regulatory Flexibility Act. Rather, the Small Business Administration (SBA) advises that agencies tailor the level, scope, and complexity of their analysis to the regulated small entity community at issue in each rule. The SBA advises that agencies should consider both adverse impacts and beneficial impacts under the Regulatory Flexibility Act, and can minimize an adverse impact by including beneficial impacts in the analysis, consistent with the legislative history of the Act that provided examples of significant impact to include adverse costs impact that is greater than the value of the regulatory good. As set forth in our final regulatory impact analysis, the Commission believes the estimated benefits of the Amendments Act and these final regulations will be significant.

regulations are likely to have benefits far exceeding costs.

In issuing these final regulations, the Commission has considered and complied with the provisions of the new EO 13563, in particular emphasizing public participation and inter-agency coordination. The Commission's regulations explain and implement Congress's amendments to the statute, but do not impinge on employer freedom of choice regarding matters of compliance. To the extent the final regulations and appendix provide clear explication of the new rules of construction for the definition of disability and examples of their application, the regulations provide information to the public in a form that is clear and intelligible, and promote informed decisionmaking.

Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

The rule does not include reporting requirements and imposes no new recordkeeping requirements. Compliance costs are expected to stem primarily from the costs of providing reasonable accommodation for individuals with substantially limiting impairments who would request and require accommodations. For all the reasons stated in the foregoing regulatory impact analysis, it is difficult to quantify how many additional requests for reasonable accommodation might result from the ADA Amendments Act and the final regulations. We estimate that the lower bound annual incremental cost of accommodations would be approximately $60 million, assuming that 16% of 12 million individuals whose coverage has been clarified request reasonable accommodations over five years at a mean cost of $150. We also estimate that the upper bound annual incremental cost of accommodations would be approximately $183 million, assuming that 16% of 38.4 million individuals whose coverage has been clarified request reasonable accommodations over five years at a mean cost of $150.

As explained in the final regulatory impact analysis, these cost figures are over-estimations for a multitude of reasons. In particular, the figures are based on a mean accommodation cost, whereas almost half of all accommodations impose no costs and the types of accommodations most likely needed by individuals whose coverage has been clarified as a result of the Amendments Act would most likely be low and no-cost accommodations.

We do not believe that administrative costs will add significantly to the annual costs resulting from the final regulations. We recognize that covered employers may in some cases need to revise internal policies and procedures to reflect the broader definition of disability under the Amendments Act and train personnel to ensure appropriate compliance with the ADAAA and the revised regulations. In addition, there will be costs associated with reviewing and analyzing the final regulations or publications describing their effects and recommended compliance practices.

Although these types of administrative costs may be particularly difficult for small businesses that operate with a smaller margin, the Commission will continue to take steps to reduce that burden. The Commission is issuing along with the final regulations a user-friendly question-and-answer guide intended to educate and promote compliance. The Commission also expects to prepare a small business handbook and to revise all of its ADA publications, which include dozens of enforcement guidances and technical assistance documents, some of which are specifically geared toward small business. Moreover, the Commission also intends to continue the provision of technical assistance to small business in its outreach efforts. In fiscal year 2009 alone, compliance with ADA standards was the main topic at 570 no-cost EEOC outreach events, reaching more than 35,000 people, many of whom were from small businesses.

Finally, any estimates of costs do not take into account the offsetting benefits noted by the research studies submitted by commenters and reviewed above in the final regulatory impact analysis. The Commission believes the estimated benefits of the Amendments Act and these final regulations are significant.

For the foregoing reasons, the Commission concludes that the regulations will not have a significant economic impact on a substantial number of small entities.

Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

The Commission is unaware of any duplicative, overlapping, or conflicting federal rules.

Paperwork Reduction Act

These regulations contain no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act. *See* 44 U.S.C. 3501, *et seq.*

Congressional Review Act

To the extent this rule is subject to the Congressional Review Act, the Commission has complied with its requirements by submitting this final rule to Congress prior to publication in the **Federal Register**.

List of Subjects in 29 CFR Part 1630

Equal employment opportunity, Individuals with disabilities.

Dated: March 10, 2011.

For the commission.

Jacqueline A. Berrien,

Chair.

Accordingly, for the reasons set forth in the preamble, the EEOC amends 29 CFR part 1630 as follows:

PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT

■ 1. Revise the authority citation for 29 CFR part 1630 to read as follows:

Authority: 42 U.S.C. 12116 and 12205a of the Americans with Disabilities Act, as amended.

■ 2. Revise § 1630.1 to read as follows:

§ 1630.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (ADA), as amended by the ADA Amendments Act of 2008 (ADAAA or Amendments Act), 42 U.S.C. 12101, *et seq.,* requiring equal employment opportunities for individuals with disabilities. The ADA as amended, and these regulations, are intended to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, and to provide clear, strong, consistent, enforceable standards addressing discrimination.

(b) *Applicability.* This part applies to "covered entities" as defined at § 1630.2(b).

(c) *Construction*—(1) In general. Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790–794a, as amended), or the regulations issued by Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or

jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than is afforded by this part.

(3) *State workers' compensation laws and disability benefit programs.* Nothing in this part alters the standards for determining eligibility for benefits under State workers' compensation laws or under State and Federal disability benefit programs.

(4) *Broad coverage.* The primary purpose of the ADAAA is to make it easier for people with disabilities to obtain protection under the ADA. Consistent with the Amendments Act's purpose of reinstating a broad scope of protection under the ADA, the definition of "disability" in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. The primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. The question of whether an individual meets the definition of disability under this part should not demand extensive analysis.

■ 3. Amend § 1630.2 as follows:

■ a. Revise paragraphs (g) through (m).

■ b. In paragraph (o)(1)(ii), remove the words "a qualified individual with a disability" and add, in their place, "an individual with a disability who is qualified".

■ c. In paragraph (o)(3), remove the words "the qualified individual with a disability" and add, in their place, "the individual with a disability".

■ d. Add paragraph (o)(4).

The revisions and additions read as follows:

§ 1630.2 Definitions.

* * * * *

(g) *Definition of "disability."*

(1) *In general. Disability* means, with respect to an individual—

(i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment as described in paragraph (l) of this section. This means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both "transitory and minor."

(2) An individual may establish coverage under any one or more of these three prongs of the definition of disability, i.e., paragraphs (g)(1)(i) (the "actual disability" prong), (g)(1)(ii) (the "record of" prong), and/or (g)(1)(iii) (the "regarded as" prong) of this section.

(3) Where an individual is not challenging a covered entity's failure to make reasonable accommodations and does not require a reasonable accommodation, it is generally unnecessary to proceed under the "actual disability" or "record of" prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the "regarded as" prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. An individual may choose, however, to proceed under the "actual disability" and/or "record of" prong regardless of whether the individual is challenging a covered entity's failure to make reasonable accommodations or requires a reasonable accommodation.

Note to paragraph (g): *See* § 1630.3 for exceptions to this definition.

(h) *Physical or mental impairment* means—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) *Major life activities*—(1) *In general.* Major life activities include, but are not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and

(ii) The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

(2) In determining other examples of major life activities, the term "major" shall not be interpreted strictly to create a demanding standard for disability. ADAAA Section 2(b)(4) (Findings and Purposes). Whether an activity is a "major life activity" is not determined by reference to whether it is of "central importance to daily life."

(j) *Substantially limits*—

(1) *Rules of construction.* The following rules of construction apply when determining whether an impairment substantially limits an individual in a major life activity:

(i) The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. "Substantially limits" is not meant to be a demanding standard.

(ii) An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(iii) The primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment "substantially limits" a major life activity should not demand extensive analysis.

(iv) The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term "substantially limits" shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for "substantially limits" applied prior to the ADAAA.

(v) The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis. Nothing in this paragraph is intended, however, to prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate.

(vi) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(vii) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(viii) An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment.

(ix) The six-month "transitory" part of the "transitory and minor" exception to "regarded as" coverage in § 1630.15(f) does not apply to the definition of "disability" under paragraphs (g)(1)(i) (the "actual disability" prong) or (g)(1)(ii) (the "record of" prong) of this section. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section.

(2) *Non-applicability to the "regarded as" prong.* Whether an individual's impairment "substantially limits" a major life activity is not relevant to coverage under paragraph (g)(1)(iii) (the "regarded as" prong) of this section.

(3) *Predictable assessments*—(i) The principles set forth in paragraphs (j)(1)(i) through (ix) of this section are intended to provide for more generous coverage and application of the ADA's prohibition on discrimination through a framework that is predictable, consistent, and workable for all individuals and entities with rights and responsibilities under the ADA as amended.

(ii) Applying the principles set forth in paragraphs (j)(1)(i) through (ix) of this section, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under paragraphs (g)(1)(i) (the "actual disability" prong) or (g)(1)(ii) (the "record of" prong) of this section. Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity. Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(iii) For example, applying the principles set forth in paragraphs (j)(1)(i) through (ix) of this section, it should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated: Deafness substantially limits hearing; blindness substantially limits seeing; an intellectual disability (formerly termed mental retardation) substantially limits brain function; partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function; autism substantially limits brain function; cancer substantially limits normal cell growth; cerebral palsy substantially limits brain function; diabetes substantially limits endocrine function; epilepsy substantially limits neurological function; Human Immunodeficiency Virus (HIV) infection substantially limits immune function; multiple sclerosis substantially limits neurological function; muscular dystrophy substantially limits neurological function; and major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia substantially limit brain function. The types of impairments described in this section may substantially limit additional major life activities not explicitly listed above.

(4) *Condition, manner, or duration*—

(i) At all times taking into account the principles in paragraphs (j)(1)(i) through (ix) of this section, in determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate cases to consider, as compared to most people in the general population, the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.

(ii) Consideration of facts such as condition, manner, or duration may include, among other things, consideration of the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function. In addition, the non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

(iii) In determining whether an individual has a disability under the "actual disability" or "record of" prongs of the definition of disability, the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in the major life activity of learning because of the additional time or effort he or she must spend to read, write, or learn compared to most people in the general population.

(iv) Given the rules of construction set forth in paragraphs (j)(1)(i) through (ix) of this section, it may often be unnecessary to conduct an analysis involving most or all of these types of facts. This is particularly true with respect to impairments such as those described in paragraph (j)(3)(iii) of this section, which by their inherent nature should be easily found to impose a substantial limitation on a major life activity, and for which the individualized assessment should be particularly simple and straightforward.

(5) *Examples of mitigating measures*—Mitigating measures include, but are not limited to:

(i) Medication, medical supplies, equipment, or appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;

(ii) Use of assistive technology;

(iii) Reasonable accommodations or "auxiliary aids or services" (as defined by 42 U.S.C. 12103(1));

(iv) Learned behavioral or adaptive neurological modifications; or

(v) Psychotherapy, behavioral therapy, or physical therapy.

(6) *Ordinary eyeglasses or contact lenses—defined.* Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(k) *Has a record of such an impairment*—

(1) *In general.* An individual has a record of a disability if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(2) *Broad construction.* Whether an individual has a record of an impairment that substantially limited a major life activity shall be construed

broadly to the maximum extent permitted by the ADA and should not demand extensive analysis. An individual will be considered to have a record of a disability if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was misclassified as having had such an impairment. In determining whether an impairment substantially limited a major life activity, the principles articulated in paragraph (j) of this section apply.

(3) *Reasonable accommodation.* An individual with a record of a substantially limiting impairment may be entitled, absent undue hardship, to a reasonable accommodation if needed and related to the past disability. For example, an employee with an impairment that previously limited, but no longer substantially limits, a major life activity may need leave or a schedule change to permit him or her to attend follow-up or "monitoring" appointments with a health care provider.

(l) "*Is regarded as having such an impairment.*" The following principles apply under the "regarded as" prong of the definition of disability (paragraph (g)(1)(iii) of this section) above:

(1) Except as provided in § 1630.15(f), an individual is "regarded as having such an impairment" if the individual is subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity. Prohibited actions include but are not limited to refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment

(2) Except as provided in § 1630.15(f), an individual is "regarded as having such an impairment" any time a covered entity takes a prohibited action against the individual because of an actual or perceived impairment, even if the entity asserts, or may or does ultimately establish, a defense to such action.

(3) Establishing that an individual is "regarded as having such an impairment" does not, by itself, establish liability. Liability is established under title I of the ADA only when an individual proves that a covered entity discriminated on the basis of disability within the meaning of section 102 of the ADA, 42 U.S.C. 12112.

(m) The term "*qualified,*" with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. *See* § 1630.3 for exceptions to this definition.

(o) * * *

(4) A covered entity is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the "actual disability" prong (paragraph (g)(1)(i) of this section), or "record of" prong (paragraph (g)(1)(ii) of this section), but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the "regarded as" prong (paragraph (g)(1)(iii) of this section).

* * * * *

■ 4. Revise § 1630.4 to read as follows:

§ 1630.4 Discrimination prohibited.

(a) *In general*—(1) It is unlawful for a covered entity to discriminate on the basis of disability against a qualified individual in regard to:

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the covered entity;

(vii) Selection and financial support for training, including: apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by a covered entity, including social and recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The term discrimination includes, but is not limited to, the acts described in §§ 1630.4 through 1630.13 of this part.

(b) *Claims of no disability.* Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of his lack of disability, including a claim that an individual with a disability was granted an accommodation that was denied to an individual without a disability.

■ 5. Amend § 1630.9 as follows:

■ a. Revise paragraph (c).

■ b. In paragraph (d), in the first sentence, remove the words "A qualified individual with a disability" and add, in their place, the words "An individual with a disability".

■ c. In paragraph (d), in the last sentence, remove the words "a qualified individual with a disability" and add, in their place, the word "qualified".

■ d. Add paragraph (e).

The revisions and additions read as follows:

§ 1630.9 Not making reasonable accommodation.

* * * * *

(c) A covered entity shall not be excused from the requirements of this part because of any failure to receive technical assistance authorized by section 507 of the ADA, including any failure in the development or dissemination of any technical assistance manual authorized by that Act.

* * * * *

(e) A covered entity is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the "actual disability" prong (§ 1630.2(g)(1)(i)), or "record of" prong (§ 1630.2(g)(1)(ii)), but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the "regarded as" prong (§ 1630.2(g)(1)(iii)).

■ 6. Revise § 1630.10 to read as follows:

§ 1630.10 Qualification standards, tests, and other selection criteria.

(a) *In general.* It is unlawful for a covered entity to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity.

(b) *Qualification standards and tests related to uncorrected vision.* Notwithstanding § 1630.2(j)(1)(vi) of this part, a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other

selection criterion, as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity. An individual challenging a covered entity's application of a qualification standard, test, or other criterion based on uncorrected vision need not be a person with a disability, but must be adversely affected by the application of the standard, test, or other criterion.

■ 7. Amend § 1630.15 by redesignating paragraph (f) as paragraph (g), and adding new paragraph (f) to read as follows:

§ 1630.15 Defenses.

* * * * *

(f) *Claims based on transitory and minor impairments under the "regarded as" prong.* It may be a defense to a charge of discrimination by an individual claiming coverage under the "regarded as" prong of the definition of disability that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment) "transitory and minor." To establish this defense, a covered entity must demonstrate that the impairment is both "transitory" and "minor." Whether the impairment at issue is or would be "transitory and minor" is to be determined objectively. A covered entity may not defeat "regarded as" coverage of an individual simply by demonstrating that it subjectively believed the impairment was transitory and minor; rather, the covered entity must demonstrate that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment) both transitory and minor. For purposes of this section, "transitory" is defined as lasting or expected to last six months or less.

* * * * *

■ 8. Amend § 1630.16(a) by removing from the last sentence the word "because" and adding, in its place, the words "on the basis".

* * * * *

■ 9. Amend the Appendix to Part 1630 as follows:

■ A. Remove the "Background."

■ B. Revise the "Introduction."

■ C. Add "Note on Certain Terminology Used" after the "Introduction."

■ D. Revise § 1630.1.

■ E. Revise Sections 1630.2(a) through (f).

■ F. Revise § 1630.2(g).

■ G. Revise § 1630.2(h).

■ H. Revise § 1630.2(i).

■ I. Revise § 1630.2(j).

■ J. Add § 1630.2(j)(1), 1630.2(j)(3), 1630.2(j)(4), and 1630.2(j)(5) and (6).

■ K. Revise § 1630.2(k).

■ L. Revise § 1630.2(l).

■ M. Amend § 1630.2(m) by revising the heading and first sentence.

■ N. Amend § 1630.2(o) as follows:

■ i. Remove the first paragraph and add, in its place, three new paragraphs.

■ ii. Remove the words "a qualified individual with a disability" wherever they appear and add, in their place, "an individual with a disability".

■ iii. Remove the words "the qualified individual with a disability" wherever they appear and add, in their place, "the individual with a disability".

■ O. Revise § 1630.4.

■ P. Amend § 1630.5 by revising the first paragraph.

■ Q. Amend § 1630.9 as follows:

■ i. Remove the words "a qualified individual with a disability" wherever they appear and add, in their place, "the individual with a disability".

■ ii. Remove the words "the qualified individual with a disability" wherever they appear and add, in their place, "the individual with a disability".

■ iii. Add new § 1630.9(e) after existing § 1630.9(d).

■ R. Revise § 1630.10.

■ S. Amend § 1630.15 by adding new § 1630.15(f) after existing § 1630.15(e).

■ T. Amend § 1630.16(a) by removing, in the last sentence, the words "qualified individuals with disabilities" and adding, in their place, "individuals with disabilities who are qualified and".

■ U. Amend § 1630.16(f) by removing, in the last paragraph, the words "a qualified individual with a disability" and adding, in their place, "an individual with a disability who is qualified".

The revisions and additions read as follows:

Appendix to Part 1630—Interpretive Guidance on Title I of the Americans With Disabilities Act

Introduction

The Americans with Disabilities Act (ADA) is a landmark piece of civil rights legislation signed into law on July 26, 1990, and amended effective January 1, 2009. *See* 42 U.S.C. 12101 *et seq.,* as amended. In passing the ADA, Congress recognized that "discrimination against individuals with disabilities continues to be a serious and pervasive social problem" and that the "continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity." 42 U.S.C. 12101(a)(2), (8). Discrimination on the basis of disability persists in critical areas such as housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, access to public services, and employment. 42 U.S.C. 12101(a)(3). Accordingly, the ADA prohibits discrimination in a wide range of areas, including employment, public services, and public accommodations.

Title I of the ADA prohibits disability-based discrimination in employment. The Equal Employment Opportunity Commission (the Commission or the EEOC) is responsible for enforcement of title I (and parts of title V) of the ADA. Pursuant to the ADA as amended, the EEOC is expressly granted the authority and is expected to amend these regulations. 42 U.S.C. 12205a. Under title I of the ADA, covered entities may not discriminate against qualified individuals on the basis of disability in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, or other terms, conditions, and privileges of employment. 42 U.S.C. 12112(a). For these purposes, "discriminate" includes (1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee; (2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicants or employees to discrimination; (3) utilizing standards, criteria, or other methods of administration that have the effect of discrimination on the basis of disability; (4) not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity; (5) denying employment opportunities to a job applicant or employee who is otherwise qualified, if such denial is based on the need to make reasonable accommodation; (6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criterion is shown to be job related for the position in question and is consistent with business necessity; and (7) subjecting applicants or employees to prohibited medical inquiries or examinations. *See* 42 U.S.C. 12112(b), (d).

As with other civil rights laws, individuals seeking protection under these anti-discrimination provisions of the ADA generally must allege and prove that they are members of the "protected class." [1] Under the

[1] Claims of improper disability-related inquiries or medical examinations, improper disclosure of confidential medical information, or retaliation may be brought by any applicant or employee, not just individuals with disabilities. *See,* e.g., *Cossette* v. *Minnesota Power & Light,* 188 F.3d 964, 969–70 (8th Cir. 1999); *Fredenburg* v. *Contra Costa County Dep't of Health Servs.,* 172 F.3d 1176, 1182 (9th Cir. 1999); *Griffin* v. *Steeltek, Inc.,* 160 F.3d 591, 594 (10th Cir. 1998). Likewise, a nondisabled applicant or employee may challenge an employment action that is based on the disability of an individual with

Continued

ADA, this typically means they have to show that they meet the statutory definition of "disability." 2008 House Judiciary Committee Report at 5. However, "Congress did not intend for the threshold question of disability to be used as a means of excluding individuals from coverage." Id.

In the original ADA, Congress defined "disability" as (1) a physical or mental impairment that substantially limits one or more major life activities of an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment. 42 U.S.C. 12202(2). Congress patterned these three parts of the definition of disability—the "actual," "record of," and "regarded as" prongs—after the definition of "handicap" found in the Rehabilitation Act of 1973. 2008 House Judiciary Committee Report at 6. By doing so, Congress intended that the relevant case law developed under the Rehabilitation Act would be generally applicable to the term "disability" as used in the ADA. H.R. Rep. No. 485 part 3, 101st Cong., 2d Sess. 27 (1990) (1990 House Judiciary Report or House Judiciary Report); *see* also S. Rep. No. 116, 101st Cong., 1st Sess. 21 (1989) (1989 Senate Report or Senate Report); H.R. Rep. No. 485 part 2, 101st Cong., 2d Sess. 50 (1990) (1990 House Labor Report or House Labor Report). Congress expected that the definition of disability and related terms, such as "substantially limits" and "major life activity," would be interpreted under the ADA "consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act"—i.e., expansively and in favor of broad coverage. ADA Amendments Act of 2008 (ADAAA or Amendments Act) at Section 2(a)(1)–(8) and (b)(1)–(6) (Findings and Purposes); *see also* Senate Statement of the Managers to Accompany S. 3406 (2008 Senate Statement of Managers) at 3 ("When Congress passed the ADA in 1990, it adopted the functional definition of disability from section 504 of the Rehabilitation Act of 1973, in part, because after 17 years of development through case law the requirements of the definition were well understood. Within this framework, with its generous and inclusive definition of disability, courts treated the determination of disability as a threshold issue but focused primarily on whether unlawful discrimination had occurred."); 2008 House Judiciary Committee Report at 6 & n.6 (noting that courts had interpreted this Rehabilitation Act definition "broadly to include persons with a wide range of physical and mental impairments").

That expectation was not fulfilled. ADAAA Section 2(a)(3). The holdings of several Supreme Court cases sharply narrowed the broad scope of protection Congress originally intended under the ADA, thus eliminating protection for many individuals whom Congress intended to protect. Id. For example, in *Sutton* v. *United Air Lines, Inc.,* 527 U.S. 471 (1999), the Court ruled that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures. In *Sutton,* the Court also adopted a restrictive reading of the meaning of being "regarded as" disabled under the ADA's definition of disability. Subsequently, in *Toyota Motor Mfg., Ky., Inc.* v. *Williams,* 534 U.S. 184 (2002), the Court held that the terms "substantially" and "major" in the definition of disability "need to be interpreted strictly to create a demanding standard for qualifying as disabled" under the ADA, and that to be substantially limited in performing a major life activity under the ADA, "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives."

As a result of these Supreme Court decisions, lower courts ruled in numerous cases that individuals with a range of substantially limiting impairments were not individuals with disabilities, and thus not protected by the ADA. *See* 2008 Senate Statement of Managers at 3 ("After the Court's decisions in *Sutton* that impairments must be considered in their mitigated state and in *Toyota* that there must be a demanding standard for qualifying as disabled, lower courts more often found that an individual's impairment did not constitute a disability. As a result, in too many cases, courts would never reach the question whether discrimination had occurred."). Congress concluded that these rulings imposed a greater degree of limitation and expressed a higher standard than it had originally intended, and coupled with the EEOC's 1991 ADA regulations which had defined the term "substantially limits" as "significantly restricted," unduly precluded many individuals from being covered under the ADA. Id. ("[t]hus, some 18 years later we are faced with a situation in which physical or mental impairments that would previously have been found to constitute disabilities are not considered disabilities under the Supreme Court's narrower standard" and "[t]he resulting court decisions contribute to a legal environment in which individuals must demonstrate an inappropriately high degree of functional limitation in order to be protected from discrimination under the ADA").

Consequently, Congress amended the ADA with the Americans with Disabilities Act Amendments Act of 2008. The ADAAA was signed into law on September 25, 2008, and became effective on January 1, 2009. This legislation is the product of extensive bipartisan efforts, and the culmination of collaboration and coordination between legislators and stakeholders, including representatives of the disability, business, and education communities. *See* Statement of Representatives Hoyer and Sensenbrenner, 154 Cong. Rec. H8294–96 (daily ed. Sept. 17, 2008) (Hoyer-Sensenbrenner Congressional Record Statement); Senate Statement of Managers at 1. The express purposes of the ADAAA are, among other things:

(1) To carry out the ADA's objectives of providing "a clear and comprehensive national mandate for the elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination" by reinstating a broad scope of protection under the ADA;

(2) To reject the requirement enunciated in *Sutton* and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) To reject the Supreme Court's reasoning in *Sutton* with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County* v. *Arline,* 480 U.S. 273 (1987), which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) To reject the standards enunciated by the Supreme Court in *Toyota* that the terms "substantially" and "major" in the definition of disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled," and that to be substantially limited in performing a major life activity under the ADA "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives";

(5) To convey congressional intent that the standard created by the Supreme Court in *Toyota* for "substantially limits," and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA;

(6) To convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis; and

(7) To express Congress' expectation that the EEOC will revise that portion of its current regulations that defines the term "substantially limits" as "significantly restricted" to be consistent with the ADA as amended.

ADAAA Section 2(b). The findings and purposes of the ADAAA "give[] clear guidance to the courts and * * * [are] intend[ed] to be applied appropriately and consistently." 2008 Senate Statement of Managers at 5.

The EEOC has amended its regulations to reflect the ADAAA's findings and purposes. The Commission believes that it is essential also to amend its appendix to the original regulations at the same time, and to reissue this interpretive guidance as amended concurrently with the issuance of the amended regulations. This will help to ensure that individuals with disabilities understand their rights, and to facilitate and encourage compliance by covered entities under this part.

Accordingly, this amended appendix addresses the major provisions of this part and explains the major concepts related to disability-based employment discrimination. This appendix represents the Commission's interpretation of the issues addressed within it, and the Commission will be guided by this

whom the applicant or employee is known to have a relationship or association. *See* 42 U.S.C. 12112(b)(4).

appendix when resolving charges of employment discrimination.

Note on Certain Terminology Used

The ADA, the EEOC's ADA regulations, and this appendix use the term "disabilities" rather than the term "handicaps" which was originally used in the Rehabilitation Act of 1973, 29 U.S.C. 701–796. Substantively, these terms are equivalent. As originally noted by the House Committee on the Judiciary, "[t]he use of the term 'disabilities' instead of the term 'handicaps' reflects the desire of the Committee to use the most current terminology. It reflects the preference of persons with disabilities to use that term rather than 'handicapped' as used in previous laws, such as the Rehabilitation Act of 1973 * * *." 1990 House Judiciary Report at 26–27; *see* also 1989 Senate Report at 21; 1990 House Labor Report at 50–51.

In addition, consistent with the Amendments Act, revisions have been made to the regulations and this Appendix to refer to "individual with a disability" and "qualified individual" as separate terms, and to change the prohibition on discrimination to "on the basis of disability" instead of prohibiting discrimination against a qualified individual "with a disability because of the disability of such individual." "This ensures that the emphasis in questions of disability discrimination is properly on the critical inquiry of whether a qualified person has been discriminated against on the basis of disability, and not unduly focused on the preliminary question of whether a particular person is a 'person with a disability.'" 2008 Senate Statement of Managers at 11.

The use of the term "Americans" in the title of the ADA, in the EEOC's regulations, or in this Appendix as amended is not intended to imply that the ADA only applies to United States citizens. Rather, the ADA protects all qualified individuals with disabilities, regardless of their citizenship status or nationality, from discrimination by a covered entity.

Finally, the terms "employer" and "employer or other covered entity" are used interchangeably throughout this Appendix to refer to all covered entities subject to the employment provisions of the ADA.

Section 1630.1 Purpose, Applicability and Construction

Section 1630.1(a) Purpose

The express purposes of the ADA as amended are to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; to ensure that the Federal Government plays a central role in enforcing the standards articulated in the ADA on behalf of individuals with disabilities; and to invoke the sweep of congressional authority to address the major areas of discrimination faced day-to-day by people with disabilities. 42 U.S.C. 12101(b). The EEOC's ADA regulations are intended to implement these Congressional purposes in simple and straightforward terms.

Section 1630.1(b) Applicability

The EEOC's ADA regulations as amended apply to all "covered entities" as defined at § 1630.2(b). The ADA defines "covered entities" to mean an employer, employment agency, labor organization, or joint labor-management committee. 42 U.S.C. 12111(2). All covered entities are subject to the ADA's rules prohibiting discrimination. 42 U.S.C. 12112.

Section 1630.1(c) Construction

The ADA must be construed as amended. The primary purpose of the Amendments Act was to make it easier for people with disabilities to obtain protection under the ADA. *See* Joint Hoyer-Sensenbrenner Statement on the Origins of the ADA Restoration Act of 2008, H.R. 3195 (reviewing provisions of H.R. 3195 as revised following negotiations between representatives of the disability and business communities) (Joint Hoyer-Sensenbrenner Statement) at 2. Accordingly, under the ADA as amended and the EEOC's regulations, the definition of "disability" "shall be construed in favor of broad coverage of individuals under [the ADA], to the maximum extent permitted by the terms of [the ADA]." 42 U.S.C. 12102(4)(A); *see* also 2008 Senate Statement of Managers at 3 ("The ADA Amendments Act * * * reiterates that Congress intends that the scope of the [ADA] be broad and inclusive."). This construction is also intended to reinforce the general rule that civil rights statutes must be broadly construed to achieve their remedial purpose. Id. at 2; *see* also 2008 House Judiciary Committee Report at 19 (this rule of construction "directs courts to construe the definition of 'disability' broadly to advance the ADA's remedial purposes" and thus "brings treatment of the ADA's definition of disability in line with treatment of other civil rights laws, which should be construed broadly to effectuate their remedial purposes").

The ADAAA and the EEOC's regulations also make clear that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, not_whether the individual meets the definition of disability. ADAAA Section 2(b)(5). This means, for example, examining whether an employer has discriminated against an employee, including whether an employer has fulfilled its obligations with respect to providing a "reasonable accommodation" to an individual with a disability; or whether an employee has met his or her responsibilities under the ADA with respect to engaging in the reasonable accommodation "interactive process." *See also* 2008 Senate Statement of Managers at 4 ("[L]ower court cases have too often turned solely on the question of whether the plaintiff is an individual with a disability rather than the merits of discrimination claims, such as whether adverse decisions were impermissibly made by the employer on the basis of disability, reasonable accommodations were denied, or qualification standards were unlawfully discriminatory."); 2008 House Judiciary Committee Report at 6 ("An individual who does not qualify as disabled * * * does not meet th[e] threshold question of coverage in the protected class and is therefore not permitted to attempt to prove his or her claim of discriminatory treatment.").

Further, the question of whether an individual has a disability under this part "should not demand extensive analysis." ADAAA Section 2(b)(5). *See* also House Education and Labor Committee Report at 9 ("The Committee intends that the establishment of coverage under the ADA should not be overly complex nor difficult. * * *").

In addition, unless expressly stated otherwise, the standards applied in the ADA are intended to provide at least as much protection as the standards applied under the Rehabilitation Act of 1973.

The ADA does not preempt any Federal law, or any State or local law, that grants to individuals with disabilities protection greater than or equivalent to that provided by the ADA. This means that the existence of a lesser standard of protection to individuals with disabilities under the ADA will not provide a defense to failing to meet a higher standard under another law. Thus, for example, title I of the ADA would not be a defense to failing to prepare and maintain an affirmative action program under section 503 of the Rehabilitation Act. On the other hand, the existence of a lesser standard under another law will not provide a defense to failing to meet a higher standard under the ADA. *See* 1990 House Labor Report at 135; 1990 House Judiciary Report at 69–70.

This also means that an individual with a disability could choose to pursue claims under a State discrimination or tort law that does not confer greater substantive rights, or even confers fewer substantive rights, if the potential available remedies would be greater than those available under the ADA and this part. The ADA does not restrict an individual with a disability from pursuing such claims in addition to charges brought under this part. 1990 House Judiciary Report at 69–70.

The ADA does not automatically preempt medical standards or safety requirements established by Federal law or regulations. It does not preempt State, county, or local laws, ordinances or regulations that are consistent with this part and designed to protect the public health from individuals who pose a direct threat to the health or safety of others that cannot be eliminated or reduced by reasonable accommodation. However, the ADA does preempt inconsistent requirements established by State or local law for safety or security sensitive positions. *See* 1989 Senate Report at 27; 1990 House Labor Report at 57.

An employer allegedly in violation of this part cannot successfully defend its actions by relying on the obligation to comply with the requirements of any State or local law that imposes prohibitions or limitations on the eligibility of individuals with disabilities who are qualified to practice any occupation or profession. For example, suppose a municipality has an ordinance that prohibits individuals with tuberculosis from teaching school children. If an individual with dormant tuberculosis challenges a private school's refusal to hire him or her on the basis of the tuberculosis, the private school

would not be able to rely on the city ordinance as a defense under the ADA.

Paragraph (c)(3) is consistent with language added to section 501 of the ADA by the ADA Amendments Act. It makes clear that nothing in this part is intended to alter the determination of eligibility for benefits under state workers' compensation laws or Federal and State disability benefit programs. State workers' compensation laws and Federal disability benefit programs, such as programs that provide payments to veterans with service-connected disabilities and the Social Security Disability Insurance program, have fundamentally different purposes than title I of the ADA.

Section 1630.2 Definitions

Sections 1630.2(a)–(f) Commission, Covered Entity, etc.

The definitions section of part 1630 includes several terms that are identical, or almost identical, to the terms found in title VII of the Civil Rights Act of 1964. Among these terms are "Commission," "Person," "State," and "Employer." These terms are to be given the same meaning under the ADA that they are given under title VII. In general, the term "employee" has the same meaning that it is given under title VII. However, the ADA's definition of "employee" does not contain an exception, as does title VII, for elected officials and their personal staffs. It should further be noted that all State and local governments are covered by title II of the ADA whether or not they are also covered by this part. Title II, which is enforced by the Department of Justice, became effective on January 26, 1992. *See* 28 CFR part 35.

The term "covered entity" is not found in title VII. However, the title VII definitions of the entities included in the term "covered entity" (e.g., employer, employment agency, labor organization, etc.) are applicable to the ADA.

Section 1630.2(g) Disability

In addition to the term "covered entity," there are several other terms that are unique to the ADA as amended. The first of these is the term "disability." "This definition is of critical importance because as a threshold issue it determines whether an individual is covered by the ADA." 2008 Senate Statement of Managers at 6.

In the original ADA, "Congress sought to protect anyone who experiences discrimination because of a current, past, or perceived disability." 2008 Senate Statement of Managers at 6. Accordingly, the definition of the term "disability" is divided into three prongs: An individual is considered to have a "disability" if that individual (1) has a physical or mental impairment that substantially limits one or more of that person's major life activities (the "actual disability" prong); (2) has a record of such an impairment (the "record of" prong); or (3) is regarded by the covered entity as an individual with a disability as defined in § 1630.2(l) (the "regarded as" prong). The ADAAA retained the basic structure and terms of the original definition of disability. However, the Amendments Act altered the interpretation and application of this critical statutory term in fundamental ways. *See* 2008 Senate Statement of Managers at 1 ("The bill maintains the ADA's inherently functional definition of disability" but "clarifies and expands the definition's meaning and application.").

As noted above, the primary purpose of the ADAAA is to make it easier for people with disabilities to obtain protection under the ADA. *See* Joint Hoyer-Sensenbrenner Statement at 2. Accordingly, the ADAAA provides rules of construction regarding the definition of disability. Consistent with the congressional intent to reinstate a broad scope of protection under the ADA, the ADAAA's rules of construction require that the definition of "disability" "shall be construed in favor of broad coverage of individuals under [the ADA], to the maximum extent permitted by the terms of [the ADA]." 42 U.S.C. 12102(4)(A). The legislative history of the ADAAA is replete with references emphasizing this principle. *See* Joint Hoyer-Sensenbrenner Statement at 2 ("[The bill] establishes that the definition of disability must be interpreted broadly to achieve the remedial purposes of the ADA"); 2008 Senate Statement of Managers at 1 (the ADAAA's purpose is to "enhance the protections of the [ADA]" by "expanding the definition, and by rejecting several opinions of the United States Supreme Court that have had the effect of restricting the meaning and application of the definition of disability"); *id.* (stressing the importance of removing barriers "to construing and applying the definition of disability more generously"); *id.* at 4 ("The managers have introduced the [ADAAA] to restore the proper balance and application of the ADA by clarifying and broadening the definition of disability, and to increase eligibility for the protections of the ADA."); *id.* ("It is our expectation that because the bill makes the definition of disability more generous, some people who were not covered before will now be covered."); *id.* (warning that "the definition of disability should not be unduly used as a tool for excluding individuals from the ADA's protections"); *id.* (this principle "sends a clear signal of our intent that the courts must interpret the definition of disability broadly rather than stringently"); 2008 House Judiciary Committee Report at 5 ("The purpose of the bill is to restore protection for the broad range of individuals with disabilities as originally envisioned by Congress by responding to the Supreme Court's narrow interpretation of the definition of disability.").

Further, as the purposes section of the ADAAA explicitly cautions, the "primary object of attention" in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations. As noted above, this means, for example, examining whether an employer has discriminated against an employee, including whether an employer has fulfilled its obligations with respect to providing a "reasonable accommodation" to an individual with a disability; or whether an employee has met his or her responsibilities under the ADA with respect to engaging in the reasonable accommodation "interactive process." ADAAA Section 2(b)(5); *see* also 2008 Senate Statement of Managers at 4 ("[L]ower court cases have too often turned solely on the question of whether the plaintiff is an individual with a disability rather than the merits of discrimination claims, such as whether adverse decisions were impermissibly made by the employer on the basis of disability, reasonable accommodations were denied, or qualification standards were unlawfully discriminatory."); 2008 House Judiciary Committee Report (criticizing pre-ADAAA court decisions which "prevented individuals that Congress unquestionably intended to cover from ever getting a chance to prove their case"). Accordingly, the threshold coverage question of whether an individual's impairment is a disability under the ADA "should not demand extensive analysis." ADAAA Section 2(b)(5).

Section 1630.2(g)(2) provides that an individual may establish coverage under any one or more (or all three) of the prongs in the definition of disability. However, to be an individual with a disability, an individual is only required to satisfy one prong.

As § 1630.2(g)(3) indicates, in many cases it may be unnecessary for an individual to resort to coverage under the "actual disability" or "record of" prongs. Where the need for a reasonable accommodation is not at issue—for example, where there is no question that the individual is "qualified" without a reasonable accommodation and is not seeking or has not sought a reasonable accommodation—it would not be necessary to determine whether the individual is substantially limited in a major life activity (under the actual disability prong) or has a record of a substantially limiting impairment (under the record of prong). Such claims could be evaluated solely under the "regarded as" prong of the definition. In fact, Congress expected the first and second prongs of the definition of disability "to be used only by people who are affirmatively seeking reasonable accommodations * * *" and that "[a]ny individual who has been discriminated against because of an impairment—short of being granted a reasonable accommodation * * *—should be bringing a claim under the third prong of the definition which will require no showing with regard to the severity of his or her impairment." Joint Hoyer-Sensenbrenner Statement at 4. An individual may choose, however, to proceed under the "actual disability" and/or "record of" prong regardless of whether the individual is challenging a covered entity's failure to make reasonable accommodation or requires a reasonable accommodation.

To fully understand the meaning of the term "disability," it is also necessary to understand what is meant by the terms "physical or mental impairment," "major life activity," "substantially limits," "record of," and "regarded as." Each of these terms is discussed below.

Section 1630.2(h) Physical or Mental Impairment

Neither the original ADA nor the ADAAA provides a definition for the terms "physical or mental impairment." However, the legislative history of the Amendments Act notes that Congress "expect[s] that the current regulatory definition of these terms,

as promulgated by agencies such as the U.S. Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ) and the Department of Education Office of Civil Rights (DOE OCR) will not change." 2008 Senate Statement of Managers at 6. The definition of "physical or mental impairment" in the EEOC's regulations remains based on the definition of the term "physical or mental impairment" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. However, the definition in EEOC's regulations adds additional body systems to those provided in the section 504 regulations and makes clear that the list is non-exhaustive.

It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural, and economic characteristics that are not impairments. The definition of the term "impairment" does not include physical characteristics such as eye color, hair color, left-handedness, or height, weight, or muscle tone that are within "normal" range and are not the result of a physiological disorder. The definition, likewise, does not include characteristic predisposition to illness or disease. Other conditions, such as pregnancy, that are not the result of a physiological disorder are also not impairments. However, a pregnancy-related impairment that substantially limits a major life activity is a disability under the first prong of the definition. Alternatively, a pregnancy-related impairment may constitute a "record of" a substantially limiting impairment," or may be covered under the "regarded as" prong if it is the basis for a prohibited employment action and is not "transitory and minor."

The definition of an impairment also does not include common personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder. Environmental, cultural, or economic disadvantages such as poverty, lack of education, or a prison record are not impairments. Advanced age, in and of itself, is also not an impairment. However, various medical conditions commonly associated with age, such as hearing loss, osteoporosis, or arthritis would constitute impairments within the meaning of this part. *See* 1989 Senate Report at 22–23; 1990 House Labor Report at 51–52; 1990 House Judiciary Report at 28–29.

Section 1630.2(i) Major Life Activities

The ADAAA provided significant new guidance and clarification on the subject of "major life activities." As the legislative history of the Amendments Act explains, Congress anticipated that protection under the ADA would now extend to a wider range of cases, in part as a result of the expansion of the category of major life activities. *See* 2008 Senate Statement of Managers at 8 n.17.

For purposes of clarity, the Amendments Act provides an illustrative list of major life activities, including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The ADA Amendments expressly made this statutory list of examples of major life activities non-exhaustive, and the regulations include sitting, reaching, and interacting with others as additional examples. Many of these major life activities listed in the ADA Amendments Act and the regulations already had been included in the EEOC's 1991 now-superseded regulations implementing title I of the ADA and in sub-regulatory documents, and already were recognized by the courts.

The ADA as amended also explicitly defines "major life activities" to include the operation of "major bodily functions." This was an important addition to the statute. This clarification was needed to ensure that the impact of an impairment on the operation of a major bodily function would not be overlooked or wrongly dismissed as falling outside the definition of "major life activities" under the ADA. 2008 House Judiciary Committee Report at 16; *see also* 2008 Senate Statement of Managers at 8 ("for the first time [in the ADAAA], the category of 'major life activities' is defined to include the operation of major bodily functions, thus better addressing chronic impairments that can be substantially limiting").

The regulations include all of those major bodily functions identified in the ADA Amendments Act's non-exhaustive list of examples and add a number of others that are consistent with the body systems listed in the regulations' definition of "impairment" (at § 1630.2(h)) and with the U.S. Department of Labor's nondiscrimination and equal employment opportunity regulations implementing section 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801, *et seq.* Thus, special sense organs, skin, genitourinary, cardiovascular, hemic, lymphatic, and musculoskeletal functions are major bodily functions not included in the statutory list of examples but included in § 1630.2(i)(1)(ii). The Commission has added these examples to further illustrate the non-exhaustive list of major life activities, including major bodily functions, and to emphasize that the concept of major life activities is to be interpreted broadly consistent with the Amendments Act. The regulations also provide that the operation of a major bodily function may include the operation of an individual organ within a body system. This would include, for example, the operation of the kidney, liver, pancreas, or other organs.

The link between particular impairments and various major bodily functions should not be difficult to identify. Because impairments, by definition, affect the functioning of body systems, they will generally affect major bodily functions. For example, cancer affects an individual's normal cell growth; diabetes affects the operation of the pancreas and also the function of the endocrine system; and Human Immunodeficiency Virus (HIV) infection affects the immune system. Likewise, sickle cell disease affects the functions of the hemic system, lymphedema affects lymphatic functions, and rheumatoid arthritis affects musculoskeletal functions.

In the legislative history of the ADAAA, Congress expressed its expectation that the statutory expansion of "major life activities" to include major bodily functions (along with other statutory changes) would lead to more expansive coverage. *See* 2008 Senate Statement of Managers at 8 n.17 (indicating that these changes will make it easier for individuals to show that they are eligible for the ADA's protections under the first prong of the definition of disability). The House Education and Labor Committee explained that the inclusion of major bodily functions would "affect cases such as *U.S.* v. *Happy Time Day Care Ctr.* in which the courts struggled to analyze whether the impact of HIV infection substantially limits various major life activities of a five-year-old child, and recognizing, among other things, that 'there is something inherently illogical about inquiring whether' a five-year-old's ability to procreate is substantially limited by his HIV infection; *Furnish* v. *SVI Sys., Inc,* in which the court found that an individual with cirrhosis of the liver caused by Hepatitis B is not disabled because liver function—unlike eating, working, or reproducing—'is not integral to one's daily existence;' and *Pimental* v. *Dartmouth-Hitchcock Clinic,* in which the court concluded that the plaintiff's stage three breast cancer did not substantially limit her ability to care for herself, sleep, or concentrate. The Committee expects that the plaintiffs in each of these cases could establish a [substantial limitation] on major bodily functions that would qualify them for protection under the ADA." 2008 House Education and Labor Committee Report at 12.

The examples of major life activities (including major bodily functions) in the ADAAA and the EEOC's regulations are illustrative and non-exhaustive, and the absence of a particular life activity or bodily function from the examples does not create a negative implication as to whether an omitted activity or function constitutes a major life activity under the statute. *See* 2008 Senate Statement of Managers at 8; *see* also 2008 House Committee on Educ. and Labor Report at 11; 2008 House Judiciary Committee Report at 17.

The Commission anticipates that courts will recognize other major life activities, consistent with the ADA Amendments Act's mandate to construe the definition of disability broadly. As a result of the ADA Amendments Act's rejection of the holding in *Toyota Motor Mfg., Ky., Inc.* v. *Williams,* 534 U.S. 184 (2002), whether an activity is a "major life activity" is not determined by reference to whether it is of "central importance to daily life." *See Toyota,* 534 U.S. at 197 (defining "major life activities" as activities that are of "central importance to most people's daily lives"). Indeed, this holding was at odds with the earlier Supreme Court decision of *Bragdon* v. *Abbott,* 524 U.S. 624 (1998), which held that a major life activity (in that case, reproduction) does not have to have a "public, economic or daily aspect." *Id.* at 639.

Accordingly, the regulations provide that in determining other examples of major life activities, the term "major" shall not be interpreted strictly to create a demanding standard for disability. Cf. 2008 Senate Statement of Managers at 7 (indicating that a person is considered an individual with a disability for purposes of the first prong when one or more of the individual's

"important life activities" are restricted) (citing 1989 Senate Report at 23). The regulations also reject the notion that to be substantially limited in performing a major life activity, an individual must have an impairment that prevents or severely restricts the individual from doing "activities that are of central importance to most people's daily lives." *Id.; see* also 2008 Senate Statement of Managers at 5 n.12.

Thus, for example, lifting is a major life activity regardless of whether an individual who claims to be substantially limited in lifting actually performs activities of central importance to daily life that require lifting. Similarly, the Commission anticipates that the major life activity of performing manual tasks (which was at issue in *Toyota*) could have many different manifestations, such as performing tasks involving fine motor coordination, or performing tasks involving grasping, hand strength, or pressure. Such tasks need not constitute activities of central importance to most people's daily lives, nor must an individual show that he or she is substantially limited in performing all manual tasks.

Section 1630.2(j) Substantially Limits

In any case involving coverage solely under the "regarded as" prong of the definition of "disability" (e.g., cases where reasonable accommodation is not at issue), it is not necessary to determine whether an individual is "substantially limited" in any major life activity. *See* 2008 Senate Statement of Managers at 10; id. at 13 ("The functional limitation imposed by an impairment is irrelevant to the third 'regarded as' prong."). Indeed, Congress anticipated that the first and second prongs of the definition of disability would "be used only by people who are affirmatively seeking reasonable accommodations * * *" and that "[a]ny individual who has been discriminated against because of an impairment—short of being granted a reasonable accommodation * * *—should be bringing a claim under the third prong of the definition which will require no showing with regard to the severity of his or her impairment." Joint Hoyer-Sensenbrenner Statement at 4. Of course, an individual may choose, however, to proceed under the "actual disability" and/or "record of" prong regardless of whether the individual is challenging a covered entity's failure to make reasonable accommodations or requires a reasonable accommodation. The concept of "substantially limits" is only relevant in cases involving coverage under the "actual disability" or "record of" prong of the definition of disability. Thus, the information below pertains to these cases only.

Section 1630.2(j)(1) Rules of Construction

It is clear in the text and legislative history of the ADAAA that Congress concluded the courts had incorrectly construed "substantially limits," and disapproved of the EEOC's now-superseded 1991 regulation defining the term to mean "significantly restricts." *See* 2008 Senate Statement of Managers at 6 ("We do not believe that the courts have correctly instituted the level of coverage we intended to establish with the term 'substantially limits' in the ADA" and "we believe that the level of limitation, and the intensity of focus, applied by the Supreme Court in *Toyota* goes beyond what we believe is the appropriate standard to create coverage under this law."). Congress extensively deliberated over whether a new term other than "substantially limits" should be adopted to denote the appropriate functional limitation necessary under the first and second prongs of the definition of disability. *See* 2008 Senate Statement of Managers at 6–7. Ultimately, Congress affirmatively opted to retain this term in the Amendments Act, rather than replace it. It concluded that "adopting a new, undefined term that is subject to widely disparate meanings is not the best way to achieve the goal of ensuring consistent and appropriately broad coverage under this Act." *Id.* Instead, Congress determined "a better way * * * to express [its] disapproval of *Sutton* and *Toyota* (along with the current EEOC regulation) is to retain the words 'substantially limits,' but clarify that it is not meant to be a demanding standard." *Id.* at 7. To achieve that goal, Congress set forth detailed findings and purposes and "rules of construction" to govern the interpretation and application of this concept going forward. *See* ADAAA Sections 2–4; 42 U.S.C. 12102(4).

The Commission similarly considered whether to provide a new definition of "substantially limits" in the regulation. Following Congress's lead, however, the Commission ultimately concluded that a new definition would inexorably lead to greater focus and intensity of attention on the threshold issue of coverage than intended by Congress. Therefore, the regulations simply provide rules of construction that must be applied in determining whether an impairment substantially limits (or substantially limited) a major life activity. These are each discussed in greater detail below.

Section 1630.2(j)(1)(i): Broad Construction; not a Demanding Standard

Section 1630.2(j)(1)(i) states: "The term 'substantially limits' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. 'Substantially limits' is not meant to be a demanding standard."

Congress stated in the ADA Amendments Act that the definition of disability "shall be construed in favor of broad coverage," and that "the term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008." 42 U.S.C. 12101(4)(A)–(B), as amended. "This is a textual provision that will legally guide the agencies and courts in properly interpreting the term 'substantially limits.'" Hoyer-Sensenbrenner Congressional Record Statement at H8295. As Congress noted in the legislative history of the ADAAA, "[t]o be clear, the purposes section conveys our intent to clarify not only that 'substantially limits' should be measured by a lower standard than that used in *Toyota,* but also that the definition of disability should not be unduly used as a tool for excluding individuals from the ADA's protections." 2008 Senate Statement of Managers at 5 (also stating that "[t]his rule of construction, together with the rule of construction providing that the definition of disability shall be construed in favor of broad coverage of individuals sends a clear signal of our intent that the courts must interpret the definition of disability broadly rather than stringently"). Put most succinctly, "substantially limits" "is not meant to be a demanding standard." 2008 Senate Statement of Managers at 7.

Section 1630.2(j)(1)(ii): Significant or Severe Restriction Not Required; Nonetheless, Not Every Impairment Is Substantially Limiting

Section 1630.2(j)(1)(ii) states: "An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a 'disability' within the meaning of this section."

In keeping with the instruction that the term "substantially limits" is not meant to be a demanding standard, the regulations provide that an impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. However, to be substantially limited in performing a major life activity an individual need not have an impairment that prevents or significantly or severely restricts the individual from performing a major life activity. *See* 2008 Senate Statement of Managers at 2, 6–8 & n.14; 2008 House Committee on Educ. and Labor Report at 9–10 ("While the limitation imposed by an impairment must be important, it need not rise to the level of severely restricting or significantly restricting the ability to perform a major life activity to qualify as a disability."); 2008 House Judiciary Committee Report at 16 (similarly requiring an "important" limitation). The level of limitation required is "substantial" as compared to most people in the general population, which does not require a significant or severe restriction. Multiple impairments that combine to substantially limit one or more of an individual's major life activities also constitute a disability. Nonetheless, not every impairment will constitute a "disability" within the meaning of this section. *See* 2008 Senate Statement of Managers at 4 ("We reaffirm that not every individual with a physical or mental impairment is covered by the first prong of the definition of disability in the ADA.")

Section 1630.2(j)(1)(iii): Substantial Limitation Should Not Be Primary Object of Attention; Extensive Analysis Not Needed

Section 1630.2(j)(1)(iii) states: "The primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations, not whether an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment 'substantially limits' a major life activity should not demand extensive analysis."

Congress retained the term "substantially limits" in part because it was concerned that adoption of a new phrase—and the resulting need for further judicial scrutiny and construction—would not "help move the focus from the threshold issue of disability to the primary issue of discrimination." 2008 Senate Statement of Managers at 7.

This was the primary problem Congress sought to solve in enacting the ADAAA. It recognized that "clearing the initial [disability] threshold is critical, as individuals who are excluded from the definition 'never have the opportunity to have their condition evaluated in light of medical evidence and a determination made as to whether they [are] 'otherwise qualified.' ' " 2008 House Judiciary Committee Report at 7; *see also* id. (expressing concern that "[a]n individual who does not qualify as disabled does not meet th[e] threshold question of coverage in the protected class and is therefore not permitted to attempt to prove his or her claim of discriminatory treatment"); 2008 Senate Statement of Managers at 4 (criticizing pre-ADAAA lower court cases that "too often turned solely on the question of whether the plaintiff is an individual with a disability rather than the merits of discrimination claims, such as whether adverse decisions were impermissibly made by the employer on the basis of disability, reasonable accommodations were denied, or qualification standards were unlawfully discriminatory").

Accordingly, the Amendments Act and the amended regulations make plain that the emphasis in ADA cases now should be squarely on the merits and not on the initial coverage question. The revised regulations therefore provide that an impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population and deletes the language to which Congress objected. The Commission believes that this provides a useful framework in which to analyze whether an impairment satisfies the definition of disability. Further, this framework better reflects Congress's expressed intent in the ADA Amendments Act that the definition of the term "disability" shall be construed broadly, and is consistent with statements in the Amendments Act's legislative history. *See* 2008 Senate Statement of Managers at 7 (stating that "adopting a new, undefined term" and the "resulting need for further judicial scrutiny and construction will not help move the focus from the threshold issue of disability to the primary issue of discrimination," and finding that " 'substantially limits' as construed consistently with the findings and purposes of this legislation establishes an appropriate functionality test of determining whether an individual has a disability" and that "using the correct standard—one that is lower than the strict or demanding standard created by the Supreme Court in *Toyota*—will make the disability determination an appropriate threshold issue but not an onerous burden for those seeking accommodations or modifications").

Consequently, this rule of construction makes clear that the question of whether an impairment substantially limits a major life activity should not demand extensive analysis. As the legislative history explains, "[w]e expect that courts interpreting [the ADA] will not demand such an extensive analysis over whether a person's physical or mental impairment constitutes a disability." Hoyer-Sensenbrenner Congressional Record Statement at H8295; *see id.* ("Our goal throughout this process has been to simplify that analysis.")

Section 1630.2(j)(1)(iv): Individualized Assessment Required, But With Lower Standard Than Previously Applied

Section 1630.2(j)(1)(iv) states: "The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term 'substantially limits' shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for 'substantially limits' applied prior to the ADAAA."

By retaining the essential elements of the definition of disability including the key term "substantially limits," Congress reaffirmed that not every individual with a physical or mental impairment is covered by the first prong of the definition of disability in the ADA. *See* 2008 Senate Statement of Managers at 4. To be covered under the first prong of the definition, an individual must establish that an impairment substantially limits a major life activity. That has not changed—nor will the necessity of making this determination on an individual basis. Id. However, what the ADAAA changed is the standard required for making this determination. Id. at 4–5.

The Amendments Act and the EEOC's regulations explicitly reject the standard enunciated by the Supreme Court in *Toyota Motor Mfg., Ky., Inc.* v. *Williams,* 534 U.S. 184 (2002), and applied in the lower courts in numerous cases. *See* ADAAA Section 2(b)(4). That previous standard created "an inappropriately high level of limitation necessary to obtain coverage under the ADA." Id. at Section 2(b)(5). The Amendments Act and the EEOC's regulations reject the notion that "substantially limits" should be interpreted strictly to create a demanding standard for qualifying as disabled. Id. at Section 2(b)(4). Instead, the ADAAA and these regulations establish a degree of functional limitation required for an impairment to constitute a disability that is consistent with what Congress originally intended. 2008 Senate Statement of Managers at 7. This will make the disability determination an appropriate threshold issue but not an onerous burden for those seeking to prove discrimination under the ADA. *Id.*

Section 1630.2(j)(1)(v): Scientific, Medical, or Statistical Analysis Not Required, But Permissible When Appropriate

Section 1630.2(j)(1)(v) states: "The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis. Nothing in this paragraph is intended, however, to prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate."

The term "average person in the general population," as the basis of comparison for determining whether an individual's impairment substantially limits a major life activity, has been changed to "most people in the general population." This revision is not a substantive change in the concept, but rather is intended to conform the language to the simpler and more straightforward terminology used in the legislative history to the Amendments Act. The comparison between the individual and "most people" need not be exacting, and usually will not require scientific, medical, or statistical analysis. Nothing in this subparagraph is intended, however, to prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate.

The comparison to most people in the general population continues to mean a comparison to other people in the general population, not a comparison to those similarly situated. For example, the ability of an individual with an amputated limb to perform a major life activity is compared to other people in the general population, not to other amputees. This does not mean that disability cannot be shown where an impairment, such as a learning disability, is clinically diagnosed based in part on a disparity between an individual's aptitude and that individual's actual versus expected achievement, taking into account the person's chronological age, measured intelligence, and age-appropriate education. Individuals diagnosed with dyslexia or other learning disabilities will typically be substantially limited in performing activities such as learning, reading, and thinking when compared to most people in the general population, particularly when the ameliorative effects of mitigating measures, including therapies, learned behavioral or adaptive neurological modifications, assistive devices (e.g., audio recordings, screen reading devices, voice activated software), studying longer, or receiving more time to take a test, are disregarded as required under the ADA Amendments Act.

Section 1630.2(j)(1)(vi): Mitigating Measures

Section 1630.2(j)(1)(vi) states: "The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity."

The ameliorative effects of mitigating measures shall not be considered in determining whether an impairment substantially limits a major life activity. Thus, "[w]ith the exception of ordinary eyeglasses and contact lenses, impairments must be examined in their unmitigated state." *See* 2008 Senate Statement of Managers at 5.

This provision in the ADAAA and the EEOC's regulations "is intended to eliminate the catch-22 that exist[ed] * * * where individuals who are subjected to discrimination on the basis of their disabilities [we]re frequently unable to

invoke the ADA's protections because they [we]re not considered people with disabilities when the effects of their medication, medical supplies, behavioral adaptations, or other interventions [we]re considered." Joint Hoyer-Sensenbrenner Statement at 2; *see also* 2008 Senate Statement of Managers at 9 ("This provision is intended to eliminate the situation created under [prior] law in which impairments that are mitigated [did] not constitute disabilities but [were the basis for discrimination]."). To the extent cases pre-dating the 2008 Amendments Act reasoned otherwise, they are contrary to the law as amended. *See* 2008 House Judiciary Committee Report at 9 & nn.25, 20–21 (citing, e.g., *McClure* v. *General Motors Corp.,* 75 F. App'x 983 (5th Cir. 2003) (court held that individual with muscular dystrophy who, with the mitigating measure of "adapting" how he performed manual tasks, had successfully learned to live and work with his disability was therefore not an individual with a disability); *Orr* v. *Wal-Mart Stores, Inc.,* 297 F.3d 720 (8th Cir. 2002) (court held that *Sutton* v. *United Air Lines, Inc.,* 527 U.S. 471 (1999), required consideration of the ameliorative effects of plaintiff's careful regimen of medicine, exercise and diet, and declined to consider impact of uncontrolled diabetes on plaintiff's ability to see, speak, read, and walk); *Gonzales* v. *National Bd. of Med. Examiners,* 225 F.3d 620 (6th Cir. 2000) (where the court found that an individual with a diagnosed learning disability was not substantially limited after considering the impact of self-accommodations that allowed him to read and achieve academic success); *McMullin* v. *Ashcroft,* 337 F. Supp. 2d 1281 (D. Wyo. 2004) (individual fired because of clinical depression not protected because of the successful management of the condition with medication for fifteen years); *Eckhaus* v. *Consol. Rail Corp.,* 2003 WL 23205042 (D.N.J. Dec. 24, 2003) (individual fired because of a hearing impairment was not protected because a hearing aid helped correct that impairment); *Todd* v. *Academy Corp.,* 57 F. Supp. 2d 448, 452 (S.D. Tex. 1999) (court held that because medication reduced the frequency and intensity of plaintiff's seizures, he was not disabled)).

An individual who, because of the use of a mitigating measure, has experienced no limitations, or only minor limitations, related to the impairment may still be an individual with a disability, where there is evidence that in the absence of an effective mitigating measure the individual's impairment would be substantially limiting. For example, someone who began taking medication for hypertension before experiencing substantial limitations related to the impairment would still be an individual with a disability if, without the medication, he or she would now be substantially limited in functions of the cardiovascular or circulatory system.

Evidence showing that an impairment would be substantially limiting in the absence of the ameliorative effects of mitigating measures could include evidence of limitations that a person experienced prior to using a mitigating measure, evidence concerning the expected course of a particular disorder absent mitigating measures, or readily available and reliable information of other types. However, we expect that consistent with the Amendments Act's command (and the related rules of construction in the regulations) that the definition of disability "should not demand extensive analysis," covered entities and courts will in many instances be able to conclude that a substantial limitation has been shown without resort to such evidence.

The Amendments Act provides an "illustrative but non-comprehensive list of the types of mitigating measures that are not to be considered." *See* 2008 Senate Statement of Managers at 9. Section 1630.2(j)(5) of the regulations includes all of those mitigating measures listed in the ADA Amendments Act's illustrative list of mitigating measures, including reasonable accommodations (as applied under title I) or "auxiliary aids or services" (as defined by 42 U.S.C. 12103(1) and applied under titles II and III).

Since it would be impossible to guarantee comprehensiveness in a finite list, the list of examples of mitigating measures provided in the ADA and the regulations is non-exhaustive. *See* 2008 House Judiciary Committee Report at 20. The absence of any particular mitigating measure from the list in the regulations should not convey a negative implication as to whether the measure is a mitigating measure under the ADA. *See* 2008 Senate Statement of Managers at 9.

For example, the fact that mitigating measures include "reasonable accommodations" generally makes it unnecessary to mention specific kinds of accommodations. Nevertheless, the use of a service animal, job coach, or personal assistant on the job would certainly be considered types of mitigating measures, as would the use of any device that could be considered assistive technology, and whether individuals who use these measures have disabilities would be determined without reference to their ameliorative effects. *See* 2008 House Judiciary Committee Report at 20; 2008 House Educ. & Labor Rep. at 15. Similarly, adaptive strategies that might mitigate, or even allow an individual to otherwise avoid performing particular major life activities, are mitigating measures and also would not be considered in determining whether an impairment is substantially limiting. *Id.*

The determination of whether or not an individual's impairment substantially limits a major life activity is unaffected by whether the individual chooses to forgo mitigating measures. For individuals who do not use a mitigating measure (including for example medication or reasonable accommodation that could alleviate the effects of an impairment), the availability of such measures has no bearing on whether the impairment substantially limits a major life activity. The limitations posed by the impairment on the individual and any negative (non-ameliorative) effects of mitigating measures used determine whether an impairment is substantially limiting. The origin of the impairment, whether its effects can be mitigated, and any ameliorative effects of mitigating measures in fact used may not be considered in determining if the impairment is substantially limiting. However, the use or non-use of mitigating measures, and any consequences thereof, including any ameliorative and non-ameliorative effects, may be relevant in determining whether the individual is qualified or poses a direct threat to safety.

The ADA Amendments Act and the regulations state that "ordinary eyeglasses or contact lenses" *shall* be considered in determining whether someone has a disability. This is an exception to the rule that the ameliorative effects of mitigating measures are not to be taken into account. "The rationale behind this exclusion is that the use of ordinary eyeglasses or contact lenses, without more, is not significant enough to warrant protection under the ADA." Joint Hoyer-Sensenbrenner Statement at 2. Nevertheless, as discussed in greater detail below at § 1630.10(b), if an applicant or employee is faced with a qualification standard that requires uncorrected vision (as the plaintiffs in the *Sutton* case were), and the applicant or employee who is adversely affected by the standard brings a challenge under the ADA, an employer will be required to demonstrate that the qualification standard is job related and consistent with business necessity. 2008 Senate Statement of Managers at 9.

The ADAAA and the EEOC's regulations both define the term "ordinary eyeglasses or contact lenses" as lenses that are "intended to fully correct visual acuity or eliminate refractive error." So, if an individual with severe myopia uses eyeglasses or contact lenses that are intended to fully correct visual acuity or eliminate refractive error, they are ordinary eyeglasses or contact lenses, and therefore any inquiry into whether such individual is substantially limited in seeing or reading would be based on how the individual sees or reads with the benefit of the eyeglasses or contact lenses. Likewise, if the only visual loss an individual experiences affects the ability to see well enough to read, and the individual's ordinary reading glasses are intended to completely correct for this visual loss, the ameliorative effects of using the reading glasses must be considered in determining whether the individual is substantially limited in seeing. Additionally, eyeglasses or contact lenses that are the wrong prescription or an outdated prescription may nevertheless be "ordinary" eyeglasses or contact lenses, if a proper prescription would fully correct visual acuity or eliminate refractive error.

Both the statute and the regulations distinguish "ordinary eyeglasses or contact lenses" from "low vision devices," which function by magnifying, enhancing, or otherwise augmenting a visual image, and which are not considered when determining whether someone has a disability. The regulations do not establish a specific level of visual acuity (e.g., 20/20) as the basis for determining whether eyeglasses or contact lenses should be considered "ordinary" eyeglasses or contact lenses. Whether lenses fully correct visual acuity or eliminate refractive error is best determined on a case-by-case basis, in light of current and objective medical evidence. Moreover, someone who uses ordinary eyeglasses or contact lenses is not automatically considered to be outside

the ADA's protection. Such an individual may demonstrate that, even with the use of ordinary eyeglasses or contact lenses, his vision is still substantially limited when compared to most people.

Section 1630.2(j)(1)(vii): Impairments That Are Episodic or in Remission

Section 1630.2(j)(1)(vii) states: "An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity in its active state. "This provision is intended to reject the reasoning of court decisions concluding that certain individuals with certain conditions—such as epilepsy or post traumatic stress disorder—were not protected by the ADA because their conditions were episodic or intermittent." Joint Hoyer-Sensenbrenner Statement at 2–3. The legislative history provides: "This * * * rule of construction thus rejects the reasoning of the courts in cases like *Todd* v. *Academy Corp.* [57 F. Supp. 2d 448, 453 (S.D. Tex. 1999)] where the court found that the plaintiff's epilepsy, which resulted in short seizures during which the plaintiff was unable to speak and experienced tremors, was not sufficiently limiting, at least in part because those seizures occurred episodically. It similarly rejects the results reached in cases [such as *Pimental* v. *Dartmouth-Hitchock Clinic,* 236 F. Supp. 2d 177, 182–83 (D.N.H. 2002)] where the courts have discounted the impact of an impairment [such as cancer] that may be in remission as too short-lived to be substantially limiting. It is thus expected that individuals with impairments that are episodic or in remission (e.g., epilepsy, multiple sclerosis, cancer) will be able to establish coverage if, when active, the impairment or the manner in which it manifests (e.g., seizures) substantially limits a major life activity." 2008 House Judiciary Committee Report at 19–20.

Other examples of impairments that may be episodic include, but are not limited to, hypertension, diabetes, asthma, major depressive disorder, bipolar disorder, and schizophrenia. *See* 2008 House Judiciary Committee Report at 19–20. The fact that the periods during which an episodic impairment is active and substantially limits a major life activity may be brief or occur infrequently is no longer relevant to determining whether the impairment substantially limits a major life activity. For example, a person with post-traumatic stress disorder who experiences intermittent flashbacks to traumatic events is substantially limited in brain function and thinking.

Section 1630.2(j)(1)(viii): Substantial Limitation in Only One Major Life Activity Required

Section 1630.2(j)(1)(viii) states: "An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment."

The ADAAA explicitly states that an impairment need only substantially limit one major life activity to be considered a disability under the ADA. *See* ADAAA Section 4(a); 42 U.S.C. 12102(4)(C). "This responds to and corrects those courts that have required individuals to show that an impairment substantially limits more than one life activity." 2008 Senate Statement of Managers at 8. In addition, this rule of construction is "intended to clarify that the ability to perform one or more particular tasks within a broad category of activities does not preclude coverage under the ADA." *Id.* To the extent cases pre-dating the applicability of the 2008 Amendments Act reasoned otherwise, they are contrary to the law as amended. Id. (citing *Holt* v. *Grand Lake Mental Health Ctr., Inc.,* 443 F. 3d 762 (10th Cir. 2006) (holding an individual with cerebral palsy who could not independently perform certain specified manual tasks was not substantially limited in her ability to perform a "broad range" of manual tasks)); *see* also 2008 House Judiciary Committee Report at 19 & n.52 (this legislatively corrects court decisions that, with regard to the major life activity of performing manual tasks, "have offset substantial limitation in the performance of some tasks with the ability to perform others" (citing *Holt*)).

For example, an individual with diabetes is substantially limited in endocrine function and thus an individual with a disability under the first prong of the definition. He need not also show that he is substantially limited in eating to qualify for coverage under the first prong. An individual whose normal cell growth is substantially limited due to lung cancer need not also show that she is substantially limited in breathing or respiratory function. And an individual with HIV infection is substantially limited in the function of the immune system, and therefore is an individual with a disability without regard to whether his or her HIV infection substantially limits him or her in reproduction.

In addition, an individual whose impairment substantially limits a major life activity need not additionally demonstrate a resulting limitation in the ability to perform activities of central importance to daily life in order to be considered an individual with a disability under § 1630.2(g)(1)(i) or § 1630.2(g)(1)(ii), as cases relying on the Supreme Court's decision in *Toyota Motor Mfg., Ky., Inc.* v. *Williams,* 534 U.S. 184 (2002), had held prior to the ADA Amendments Act.

Thus, for example, someone with an impairment resulting in a 20-pound lifting restriction that lasts or is expected to last for several months is substantially limited in the major life activity of lifting, and need not also show that he is unable to perform activities of daily living that require lifting in order to be considered substantially limited in lifting. Similarly, someone with monocular vision whose depth perception or field of vision would be substantially limited, with or without any compensatory strategies the individual may have developed, need not also show that he is unable to perform activities of central importance to daily life that require *see*ing in order to be substantially limited in seeing.

Section 1630.2(j)(1)(ix): Effects of an Impairment Lasting Fewer Than Six Months Can Be Substantially Limiting

Section 1630.2(j)(1)(ix) states: "The six-month 'transitory' part of the 'transitory and minor' exception to 'regarded as' coverage in § 1630.2(l) does not apply to the definition of 'disability' under § 1630.2(g)(1)(i) or § 1630.2(g)(1)(ii). The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section."

The regulations include a clear statement that the definition of an impairment as transitory, that is, "lasting or expected to last for six months or less," only applies to the "regarded as" (third) prong of the definition of "disability" as part of the "transitory and minor" defense to "regarded as" coverage. It does not apply to the first or second prong of the definition of disability. *See* Joint Hoyer-Sensenbrenner Statement at 3 ("[T]here is no need for the transitory and minor exception under the first two prongs because it is clear from the statute and the legislative history that a person can only bring a claim if the impairment substantially limits one or more major life activities or the individual has a record of an impairment that substantially limits one or more major life activities.").

Therefore, an impairment does not have to last for more than six months in order to be considered substantially limiting under the first or the second prong of the definition of disability. For example, as noted above, if an individual has a back impairment that results in a 20-pound lifting restriction that lasts for several months, he is substantially limited in the major life activity of lifting, and therefore covered under the first prong of the definition of disability. At the same time, "[t]he duration of an impairment is one factor that is relevant in determining whether the impairment substantially limits a major life activity. Impairments that last only for a short period of time are typically not covered, although they may be covered if sufficiently severe." Joint Hoyer-Sensenbrenner Statement at 5.

Section 1630.2(j)(3) Predictable Assessments

As the regulations point out, disability is determined based on an individualized assessment. There is no "per se" disability. However, as recognized in the regulations, the individualized assessment of some kinds of impairments will virtually always result in a determination of disability. The inherent nature of these types of medical conditions will in virtually all cases give rise to a substantial limitation of a major life activity. Cf. *Heiko* v. *Columbo Savings Bank, F.S.B.,* 434 F.3d 249, 256 (4th Cir. 2006) (stating, even pre-ADAAA, that "certain impairments are by their very nature substantially limiting: the major life activity of seeing, for example, is always substantially limited by blindness"). Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

This result is the consequence of the combined effect of the statutory changes to the definition of disability contained in the

Amendments Act and flows from application of the rules of construction set forth in §§ 1630.2(j)(1)(i)–(ix) (including the lower standard for "substantially limits"; the rule that major life activities include major bodily functions; the principle that impairments that are episodic or in remission are disabilities if they would be substantially limiting when active; and the requirement that the ameliorative effects of mitigating measures (other than ordinary eyeglasses or contact lenses) must be disregarded in assessing whether an individual has a disability).

The regulations at § 1630.2(j)(3)(iii) provide examples of the types of impairments that should easily be found to substantially limit a major life activity. The legislative history states that Congress modeled the ADA definition of disability on the definition contained in the Rehabilitation Act, and said it wished to return courts to the way they had construed that definition. *See* 2008 House Judiciary Committee Report at 6. Describing this goal, the legislative history states that courts had interpreted the Rehabilitation Act definition "broadly to include persons with a wide range of physical and mental impairments such as epilepsy, diabetes, multiple sclerosis, and intellectual and developmental disabilities * * * even where a mitigating measure—like medication or a hearing aid—might lessen their impact on the individual." Id.; *see* also id. at 9 (referring to individuals with disabilities that had been covered under the Rehabilitation Act and that Congress intended to include under the ADA—"people with serious health conditions like epilepsy, diabetes, cancer, cerebral palsy, multiple sclerosis, intellectual and developmental disabilities"); id. at n.6 (citing cases also finding that cerebral palsy, hearing impairments, mental retardation, heart disease, and vision in only one eye were disabilities under the Rehabilitation Act); id. at 10 (citing testimony from Rep. Steny H. Hoyer, one of the original lead sponsors of the ADA in 1990, stating that "we could not have fathomed that people with diabetes, epilepsy, heart conditions, cancer, mental illnesses and other disabilities would have their ADA claims denied because they would be considered too functional to meet the definition of disability"); 2008 Senate Statement of Managers at 3 (explaining that "we [we]re faced with a situation in which physical or mental impairments that would previously [under the Rehabilitation Act] have been found to constitute disabilities [we]re not considered disabilities" and citing individuals with impairments such as amputation, intellectual disabilities, epilepsy, multiple sclerosis, diabetes, muscular dystrophy, and cancer as examples).

Of course, the impairments listed in subparagraph 1630.2(j)(3)(iii) may substantially limit a variety of other major life activities in addition to those listed in the regulation. For example, mobility impairments requiring the use of a wheelchair substantially limit the major life activity of walking. Diabetes may substantially limit major life activities such as eating, sleeping, and thinking. Major depressive disorder may substantially limit major life activities such as thinking, concentrating, sleeping, and interacting with others. Multiple sclerosis may substantially limit major life activities such as walking, bending, and lifting.

By using the term "brain function" to describe the system affected by various mental impairments, the Commission is expressing no view on the debate concerning whether mental illnesses are caused by environmental or biological factors, but rather intends the term to capture functions such as the ability of the brain to regulate thought processes and emotions.

Section 1630.2(j)(4) Condition, Manner, or Duration

The regulations provide that facts such as the "condition, manner, or duration" of an individual's performance of a major life activity may be useful in determining whether an impairment results in a substantial limitation. In the legislative history of the ADAAA, Congress reiterated what it had said at the time of the original ADA: "A person is considered an individual with a disability for purposes of the first prong of the definition when [one or more of] the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people." 2008 Senate Statement of Managers at 7 (citing 1989 Senate Report at 23). According to Congress: "We particularly believe that this test, which articulated an analysis that considered whether a person's activities are limited in condition, duration and manner, is a useful one. We reiterate that using the correct standard—one that is lower than the strict or demanding standard created by the Supreme Court in *Toyota*—will make the disability determination an appropriate threshold issue but not an onerous burden for those seeking accommodations * * *. At the same time, plaintiffs should not be constrained from offering evidence needed to establish that their impairment is substantially limiting." 2008 Senate Statement of Managers at 7.

Consistent with the legislative history, an impairment may substantially limit the "condition" or "manner" under which a major life activity can be performed in a number of ways. For example, the condition or manner under which a major life activity can be performed may refer to the way an individual performs a major life activity. Thus, the condition or manner under which a person with an amputated hand performs manual tasks will likely be more cumbersome than the way that someone with two hands would perform the same tasks.

Condition or manner may also describe how performance of a major life activity affects the individual with an impairment. For example, an individual whose impairment causes pain or fatigue that most people would not experience when performing that major life activity may be substantially limited. Thus, the condition or manner under which someone with coronary artery disease performs the major life activity of walking would be substantially limiting if the individual experiences shortness of breath and fatigue when walking distances that most people could walk without experiencing such effects. Similarly, condition or manner may refer to the extent to which a major life activity, including a major bodily function, can be performed. For example, the condition or manner under which a major bodily function can be performed may be substantially limited when the impairment "causes the operation [of the bodily function] to over-produce or under-produce in some harmful fashion." *See* 2008 House Judiciary Committee Report at 17.

"Duration" refers to the length of time an individual can perform a major life activity or the length of time it takes an individual to perform a major life activity, as compared to most people in the general population. For example, a person whose back or leg impairment precludes him or her from standing for more than two hours without significant pain would be substantially limited in standing, since most people can stand for more than two hours without significant pain. However, a person who can walk for ten miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing some discomfort. *See* 2008 Senate Statement of Managers at 7 (citing 1989 Senate Report at 23).

The regulations provide that in assessing substantial limitation and considering facts such as condition, manner, or duration, the non-ameliorative effects of mitigating measures may be considered. Such "non-ameliorative effects" could include negative side effects of medicine, burdens associated with following a particular treatment regimen, and complications that arise from surgery, among others. Of course, in many instances, it will not be necessary to assess the negative impact of a mitigating measure in determining that a particular impairment substantially limits a major life activity. For example, someone with end-stage renal disease is substantially limited in kidney function, and it thus is not necessary to consider the burdens that dialysis treatment imposes.

Condition, manner, or duration may also suggest the amount of time or effort an individual has to expend when performing a major life activity because of the effects of an impairment, even if the individual is able to achieve the same or similar result as someone without the impairment. For this reason, the regulations include language which says that the outcome an individual with a disability is able to achieve is not determinative of whether he or she is substantially limited in a major life activity.

Thus, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in the major life activity of learning because of the additional time or effort he or she must spend to read, write, or learn compared to most people in the general population. As Congress emphasized in passing the Amendments Act, "[w]hen considering the condition, manner, or duration in which an individual with a specific learning disability performs a major life activity, it is critical to reject the assumption that an individual who has performed well academically cannot be

substantially limited in activities such as learning, reading, writing, thinking, or speaking." 2008 Senate Statement of Managers at 8. Congress noted that: "In particular, some courts have found that students who have reached a high level of academic achievement are not to be considered individuals with disabilities under the ADA, as such individuals may have difficulty demonstrating substantial limitation in the major life activities of learning or reading relative to 'most people.' When considering the condition, manner or duration in which an individual with a specific learning disability performs a major life activity, it is critical to reject the assumption that an individual who performs well academically or otherwise cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking. As such, the Committee rejects the findings in *Price* v. *National Board of Medical Examiners, Gonzales* v. *National Board of Medical Examiners,* and *Wong* v. *Regents of University of California*. The Committee believes that the comparison of individuals with specific learning disabilities to 'most people' is not problematic unto itself, but requires a careful analysis of the method and manner in which an individual's impairment limits a major life activity. For the majority of the population, the basic mechanics of reading and writing do not pose extraordinary lifelong challenges; rather, recognizing and forming letters and words are effortless, unconscious, automatic processes. Because specific learning disabilities are neurologically-based impairments, the process of reading for an individual with a reading disability (e.g. dyslexia) is word-by-word, and otherwise cumbersome, painful, deliberate and slow—throughout life. The Committee expects that individuals with specific learning disabilities that substantially limit a major life activity will be better protected under the amended Act." 2008 House Educ. & Labor Rep. at 10–11.

It bears emphasizing that while it may be useful in appropriate cases to consider facts such as condition, manner, or duration, it is always necessary to consider and apply the rules of construction in § 1630.2(j)(1)(i)–(ix) that set forth the elements of broad coverage enacted by Congress. 2008 Senate Statement of Managers at 6. Accordingly, while the Commission's regulations retain the concept of "condition, manner, or duration," they no longer include the additional list of "substantial limitation" factors contained in the previous version of the regulations (i.e., the nature and severity of the impairment, duration or expected duration of the impairment, and actual or expected permanent or long-term impact of or resulting from the impairment).

Finally, "condition, manner, or duration" are not intended to be used as a rigid three-part standard that must be met to establish a substantial limitation. "Condition, manner, or duration" are not required "factors" that must be considered as a talismanic test. Rather, in referring to "condition, manner, *or* duration," the regulations make clear that these are merely the types of facts that may be considered in appropriate cases. To the extent such aspects of limitation may be useful or relevant to show a substantial limitation in a particular fact pattern, some or all of them (and related facts) may be considered, but evidence relating to each of these facts may not be necessary to establish coverage.

At the same time, individuals seeking coverage under the first or second prong of the definition of disability should not be constrained from offering evidence needed to establish that their impairment is substantially limiting. *See* 2008 Senate Statement of Managers at 7. Of course, covered entities may defeat a showing of "substantial limitation" by refuting whatever evidence the individual seeking coverage has offered, or by offering evidence that shows an impairment does not impose a substantial limitation on a major life activity. However, a showing of substantial limitation is not defeated by facts related to "condition, manner, or duration" that are not pertinent to the substantial limitation the individual has proffered.

Sections 1630.2(j)(5) and (6) Examples of Mitigating Measures; Ordinary Eyeglasses or Contact Lenses

These provisions of the regulations provide numerous examples of mitigating measures and the definition of "ordinary eyeglasses or contact lenses." These definitions have been more fully discussed in the portions of this interpretive guidance concerning the rules of construction in § 1630.2(j)(1).

Substantially Limited in Working

The Commission has removed from the text of the regulations a discussion of the major life activity of working. This is consistent with the fact that no other major life activity receives special attention in the regulation, and with the fact that, in light of the expanded definition of disability established by the Amendments Act, this major life activity will be used in only very targeted situations.

In most instances, an individual with a disability will be able to establish coverage by showing substantial limitation of a major life activity other than working; impairments that substantially limit a person's ability to work usually substantially limit one or more other major life activities. This will be particularly true in light of the changes made by the ADA Amendments Act. *See, e.g., Corley* v. *Dep't of Veterans Affairs ex rel Principi,* 218 F. App'x. 727, 738 (10th Cir. 2007) (employee with seizure disorder was not substantially limited in working because he was not foreclosed from jobs involving driving, operating machinery, childcare, military service, and other jobs; employee would now be substantially limited in neurological function); *Olds* v. *United Parcel Serv., Inc.,* 127 F. App'x. 779, 782 (6th Cir. 2005) (employee with bone marrow cancer was not substantially limited in working due to lifting restrictions caused by his cancer; employee would now be substantially limited in normal cell growth); *Williams* v. *Philadelphia Hous. Auth. Police Dep't,* 380 F.3d 751, 763–64 (3d Cir. 2004) (issue of material fact concerning whether police officer's major depression substantially limited him in performing a class of jobs due to restrictions on his ability to carry a firearm; officer would now be substantially limited in brain function).[2]

In the rare cases where an individual has a need to demonstrate that an impairment substantially limits him or her in working, the individual can do so by showing that the impairment substantially limits his or her ability to perform a class of jobs or broad range of jobs in various classes as compared to most people having comparable training, skills, and abilities. In keeping with the findings and purposes of the Amendments Act, the determination of coverage under the law should not require extensive and elaborate assessment, and the EEOC and the courts are to apply a lower standard in determining when an impairment substantially limits a major life activity, including the major life activity of working, than they applied prior to the Amendments Act. The Commission believes that the courts, in applying an overly strict standard with regard to "substantially limits" generally, have reached conclusions with regard to what is necessary to demonstrate a substantial limitation in the major life activity of working that would be inconsistent with the changes now made by the Amendments Act. Accordingly, as used in this section the terms "class of jobs" and "broad range of jobs in various classes" will be applied in a more straightforward and simple manner than they were applied by the courts prior to the Amendments Act.[3]

Demonstrating a substantial limitation in performing the unique aspects of a single specific job is not sufficient to establish that

[2] In addition, many cases previously analyzed in terms of whether the plaintiff was "substantially limited in working" will now be analyzed under the "regarded as" prong of the definition of disability as revised by the Amendments Act. *See,* e.g., *Cannon* v. *Levi Strauss & Co.,* 29 F. App'x. 331 (6th Cir. 2002) (factory worker laid off due to her carpal tunnel syndrome not regarded as substantially limited in working because her job of sewing machine operator was not a "broad class of jobs"; she would now be protected under the third prong because she was fired because of her impairment, carpal tunnel syndrome); *Bridges* v. *City of Bossier,* 92 F.3d 329 (5th Cir. 1996) (applicant not hired for firefighting job because of his mild hemophilia not regarded as substantially limited in working; applicant would now be protected under the third prong because he was not hired because of his impairment, hemophilia).

[3] In analyzing working as a major life activity in the past, some courts have imposed a complex and onerous standard that would be inappropriate under the Amendments Act. *See,* e.g., *Duncan* v. *WMATA,* 240 F.3d 1110, 1115 (DC Cir. 2001) (manual laborer whose back injury prevented him from lifting more than 20 pounds was not substantially limited in working because he did not present evidence of the number and types of jobs available to him in the Washington area; testimony concerning his inquiries and applications for truck driving jobs that all required heavy lifting was insufficient); *Taylor* v. *Federal Express Corp.,* 429 F.3d 461, 463–64 (4th Cir. 2005) (employee's impairment did not substantially limit him in working because, even though evidence showed that employee's injury disqualified him from working in numerous jobs in his geographic region, it also showed that he remained qualified for many other jobs). Under the Amendments Act, the determination of whether a person is substantially limited in working is more straightforward and simple than it was prior to the Act.

a person is substantially limited in the major life activity of working.

A class of jobs may be determined by reference to the nature of the work that an individual is limited in performing (such as commercial truck driving, assembly line jobs, food service jobs, clerical jobs, or law enforcement jobs) or by reference to job-related requirements that an individual is limited in meeting (for example, jobs requiring repetitive bending, reaching, or manual tasks, jobs requiring repetitive or heavy lifting, prolonged sitting or standing, extensive walking, driving, or working under conditions such as high temperatures or noise levels).

For example, if a person whose job requires heavy lifting develops a disability that prevents him or her from lifting more than fifty pounds and, consequently, from performing not only his or her existing job but also other jobs that would similarly require heavy lifting, that person would be substantially limited in working because he or she is substantially limited in performing the class of jobs that require heavy lifting.

Section 1630.2(k) Record of a Substantially Limiting Impairment

The second prong of the definition of "disability" provides that an individual with a record of an impairment that substantially limits or limited a major life activity is an individual with a disability. The intent of this provision, in part, is to ensure that people are not discriminated against because of a history of disability. For example, the "record of" provision would protect an individual who was treated for cancer ten years ago but who is now deemed by a doctor to be free of cancer, from discrimination based on that prior medical history. This provision also ensures that individuals are not discriminated against because they have been misclassified as disabled. For example, individuals misclassified as having learning disabilities or intellectual disabilities (formerly termed "mental retardation") are protected from discrimination on the basis of that erroneous classification. Senate Report at 23; House Labor Report at 52–53; House Judiciary Report at 29; 2008 House Judiciary Report at 7–8 & n.14. Similarly, an employee who in the past was misdiagnosed with bipolar disorder and hospitalized as the result of a temporary reaction to medication she was taking has a record of a substantially limiting impairment, even though she did not actually have bipolar disorder.

This part of the definition is satisfied where evidence establishes that an individual has had a substantially limiting impairment. The impairment indicated in the record must be an impairment that would substantially limit one or more of the individual's major life activities. There are many types of records that could potentially contain this information, including but not limited to, education, medical, or employment records.

Such evidence that an individual has a past history of an impairment that substantially limited a major life activity is all that is necessary to establish coverage under the second prong. An individual may have a "record of" a substantially limiting impairment—and thus be protected under the "record of" prong of the statute—even if a covered entity does not specifically know about the relevant record. Of course, for the covered entity to be liable for discrimination under title I of the ADA, the individual with a "record of" a substantially limiting impairment must prove that the covered entity discriminated on the basis of the record of the disability.

The terms "substantially limits" and "major life activity" under the second prong of the definition of "disability" are to be construed in accordance with the same principles applicable under the "actual disability" prong, as set forth in § 1630.2(j).

Individuals who are covered under the "record of" prong will often be covered under the first prong of the definition of disability as well. This is a consequence of the rule of construction in the ADAAA and the regulations providing that an individual with an impairment that is episodic or in remission can be protected under the first prong if the impairment would be substantially limiting when active. *See* 42 U.S.C. 12102(4)(D); § 1630.2(j)(1)(vii). Thus, an individual who has cancer that is currently in remission is an individual with a disability under the "actual disability" prong because he has an impairment that would substantially limit normal cell growth when active. He is also covered by the "record of" prong based on his history of having had an impairment that substantially limited normal cell growth.

Finally, this section of the EEOC's regulations makes it clear that an individual with a record of a disability is entitled to a reasonable accommodation currently needed for limitations resulting from or relating to the past substantially limiting impairment. This conclusion, which has been the Commission's long-standing position, is confirmed by language in the ADA Amendments Act stating that individuals covered only under the "regarded as" prong of the definition of disability are not entitled to reasonable accommodation. *See* 42 U.S.C. 12201(h). By implication, this means that individuals covered under the first or second prongs are otherwise eligible for reasonable accommodations. *See* 2008 House Judiciary Committee Report at 22 ("This makes clear that the duty to accommodate . . . arises only when an individual establishes coverage under the first or second prong of the definition."). Thus, as the regulations explain, an employee with an impairment that previously substantially limited but no longer substantially limits, a major life activity may need leave or a schedule change to permit him or her to attend follow-up or "monitoring" appointments from a health care provider.

Section 1630.2(l) Regarded as Substantially Limited in a Major Life Activity

Coverage under the "regarded as" prong of the definition of disability should not be difficult to establish. *See* 2008 House Judiciary Committee Report at 17 (explaining that Congress never expected or intended it would be a difficult standard to meet). Under the third prong of the definition of disability, an individual is "regarded as having such an impairment" if the individual is subjected to an action prohibited by the ADA because of an actual or perceived impairment that is not "transitory and minor."

This third prong of the definition of disability was originally intended to express Congress's understanding that "unfounded concerns, mistaken beliefs, fears, myths, or prejudice about disabilities are often just as disabling as actual impairments, and [its] corresponding desire to prohibit discrimination founded on such perceptions." 2008 Senate Statement of Managers at 9; 2008 House Judiciary Committee Report at 17 (same). In passing the original ADA, Congress relied extensively on the reasoning of *School Board of Nassau County* v. *Arline* [4] "that the negative reactions of others are just as disabling as the actual impact of an impairment." 2008 Senate Statement of Managers at 9. The ADAAA reiterates Congress's reliance on the broad views enunciated in that decision, and Congress "believe[s] that courts should continue to rely on this standard." Id.

Accordingly, the ADA Amendments Act broadened the application of the "regarded as" prong of the definition of disability. 2008 Senate Statement of Managers at 9–10. In doing so, Congress rejected court decisions that had required an individual to establish that a covered entity perceived him or her to have an impairment that substantially limited a major life activity. This provision is designed to restore Congress's intent to allow individuals to establish coverage under the "regarded as" prong by showing that they were treated adversely because of an impairment, without having to establish the covered entity's beliefs concerning the severity of the impairment. Joint Hoyer-Sensenbrenner Statement at 3.

Thus it is not necessary, as it was prior to the ADA Amendments Act, for an individual to demonstrate that a covered entity perceived him as substantially limited in the ability to perform a major life activity in order for the individual to establish that he or she is covered under the "regarded as" prong. Nor is it necessary to demonstrate that the impairment relied on by a covered entity is (in the case of an actual impairment) or would be (in the case of a perceived impairment) substantially limiting for an individual to be "regarded as having such an impairment." In short, to qualify for coverage under the "regarded as" prong, an individual is not subject to any functional test. *See* 2008 Senate Statement of Managers at 13 ("The functional limitation imposed by an impairment is irrelevant to the third 'regarded as' prong."); 2008 House Judiciary Committee Report at 17 (that is, "the individual is not required to show that the perceived impairment limits performance of a major life activity"). The concepts of "major life activities" and "substantial limitation" simply are not relevant in evaluating whether an individual is "regarded as having such an impairment."

To illustrate how straightforward application of the "regarded as" prong is, if an employer refused to hire an applicant because of skin graft scars, the employer has regarded the applicant as an individual with a disability. Similarly, if an employer

[4] 480 U.S. at 282–83.

terminates an employee because he has cancer, the employer has regarded the employee as an individual with a disability.

A "prohibited action" under the "regarded as" prong refers to an action of the type that would be unlawful under the ADA (but for any defenses to liability). Such prohibited actions include, but are not limited to, refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment.

Where an employer bases a prohibited employment action on an actual or perceived impairment that is not "transitory and minor," the employer regards the individual as disabled, whether or not myths, fears, or stereotypes about disability motivated the employer's decision. Establishing that an individual is "regarded as having such an impairment" does not, by itself, establish liability. Liability is established only if an individual meets the burden of proving that the covered entity discriminated unlawfully within the meaning of section 102 of the ADA, 42 U.S.C. 12112.

Whether a covered entity can ultimately establish a defense to liability is an inquiry separate from, and follows after, a determination that an individual was regarded as having a disability. Thus, for example, an employer who terminates an employee with angina from a manufacturing job that requires the employee to work around machinery, believing that the employee will pose a safety risk to himself or others if he were suddenly to lose consciousness, has regarded the individual as disabled. Whether the employer has a defense (e.g., that the employee posed a direct threat to himself or coworkers) is a separate inquiry.

The fact that the "regarded as" prong requires proof of causation in order to show that a person is covered does not mean that proving a "regarded as" claim is complex. While a person must show, for both coverage under the "regarded as" prong and for ultimate liability, that he or she was subjected to a prohibited action because of an actual or perceived impairment, this showing need only be made once. Thus, evidence that a covered entity took a prohibited action because of an impairment will establish coverage and will be relevant in establishing liability, although liability may ultimately turn on whether the covered entity can establish a defense.

As prescribed in the ADA Amendments Act, the regulations provide an exception to coverage under the "regarded as" prong where the impairment on which a prohibited action is based is both transitory (having an actual or expected duration of six months or less) and minor. The regulations make clear (at § 1630.2(l)(2) and § 1630.15(f)) that this exception is a defense to a claim of discrimination. "Providing this exception responds to concerns raised by employer organizations and is reasonable under the 'regarded as' prong of the definition because individuals seeking coverage under this prong need not meet the functional limitation requirement contained in the first two prongs of the definition." 2008 Senate Statement of Managers at 10; *see* also 2008 House Judiciary Committee Report at 18 (explaining that "absent this exception, the third prong of the definition would have covered individuals who are regarded as having common ailments like the cold or flu, and this exception responds to concerns raised by members of the business community regarding potential abuse of this provision and misapplication of resources on individuals with minor ailments that last only a short period of time"). However, as an exception to the general rule for broad coverage under the "regarded as" prong, this limitation on coverage should be construed narrowly. 2008 House Judiciary Committee Report at 18.

The relevant inquiry is whether the actual or perceived impairment on which the employer's action was based is objectively "transitory and minor," not whether the employer claims it subjectively believed the impairment was transitory and minor. For example, an employer who terminates an employee whom it believes has bipolar disorder cannot take advantage of this exception by asserting that it believed the employee's impairment was transitory and minor, since bipolar disorder is not objectively transitory and minor. At the same time, an employer that terminated an employee with an objectively "transitory and minor" hand wound, mistakenly believing it to be symptomatic of HIV infection, will nevertheless have "regarded" the employee as an individual with a disability, since the covered entity took a prohibited employment action based on a perceived impairment (HIV infection) that is not "transitory and minor."

An individual covered only under the "regarded as" prong is not entitled to reasonable accommodation. 42 U.S.C. 12201(h). Thus, in cases where reasonable accommodation is not at issue, the third prong provides a more straightforward framework for analyzing whether discrimination occurred. As Congress observed in enacting the ADAAA: "[W]e expect [the first] prong of the definition to be used only by people who are affirmatively seeking reasonable accommodations or modifications. Any individual who has been discriminated against because of an impairment—short of being granted a reasonable accommodation or modification—should be bringing a claim under the third prong of the definition which will require no showing with regard to the severity of his or her impairment." Joint Hoyer-Sensenbrenner Statement at 6.

Section 1630.2(m) Qualified Individual

The ADA prohibits discrimination on the basis of disability against a qualified individual." * * *

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Section 1630.2(o) Reasonable Accommodation

An individual with a disability is considered "qualified" if the individual can perform the essential functions of the position held or desired with or without reasonable accommodation. A covered entity is required, absent undue hardship, to provide reasonable accommodation to an otherwise qualified individual with a substantially limiting impairment or a "record of" such an impairment. However, a covered entity is not required to provide an accommodation to an individual who meets the definition of disability solely under the "regarded as" prong.

The legislative history of the ADAAA makes clear that Congress included this provision in response to various court decisions that had held (pre-Amendments Act) that individuals who were covered solely under the "regarded as" prong were eligible for reasonable accommodations. In those cases, the plaintiffs had been found not to be covered under the first prong of the definition of disability "because of the overly stringent manner in which the courts had been interpreting that prong." 2008 Senate Statement of Managers at 11. The legislative history goes on to explain that "[b]ecause of [Congress's] strong belief that accommodating individuals with disabilities is a key goal of the ADA, some members [of Congress] continue to have reservations about this provision." Id. However, Congress ultimately concluded that clarifying that individuals covered solely under the "regarded as" prong are not entitled to reasonable accommodations "is an acceptable compromise given our strong expectation that such individuals would now be covered under the first prong of the definition [of disability], properly applied"). Further, individuals covered only under the third prong still may bring discrimination claims (other than failure-to-accommodate claims) under title I of the ADA. 2008 Senate Statement of Managers at 9–10.

In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. There are three categories of reasonable accommodation. These are (1) accommodations that are required to ensure equal opportunity in the application process; (2) accommodations that enable the employer's employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable the employer's employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities. It should be noted that nothing in this part prohibits employers or other covered entities from providing accommodations beyond those required by this part.

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Section 1630.4 Discrimination Prohibited

Paragraph (a) of this provision prohibits discrimination on the basis of disability against a qualified individual in all aspects of the employment relationship. The range of employment decisions covered by this nondiscrimination mandate is to be construed in a manner consistent with the regulations implementing section 504 of the Rehabilitation Act of 1973.

Paragraph (b) makes it clear that the language "on the basis of disability" is not intended to create a cause of action for an individual without a disability who claims that someone with a disability was treated more favorably (disparate treatment), or was

provided a reasonable accommodation that an individual without a disability was not provided. *See* 2008 House Judiciary Committee Report at 21 (this provision "prohibits reverse discrimination claims by disallowing claims based on the lack of disability"). Additionally, the ADA and this part do not affect laws that may require the affirmative recruitment or hiring of individuals with disabilities, or any voluntary affirmative action employers may undertake on behalf of individuals with disabilities. However, part 1630 is not intended to limit the ability of covered entities to choose and maintain a qualified workforce. Employers can continue to use criteria that are job related and consistent with business necessity to select qualified employees, and can continue to hire employees who can perform the essential functions of the job.

The Amendments Act modified title I's nondiscrimination provision to replace the prohibition on discrimination "against a qualified individual with a disability because of the disability of such individual" with a prohibition on discrimination "against a qualified individual on the basis of disability." As the legislative history of the ADAAA explains: "[T]he bill modifies the ADA to conform to the structure of Title VII and other civil rights laws by requiring an individual to demonstrate discrimination 'on the basis of disability' rather than discrimination 'against an individual with a disability' because of the individual's disability. We hope this will be an important signal to both lawyers and courts to spend less time and energy on the minutia of an individual's impairment, and more time and energy on the merits of the case—including whether discrimination occurred because of the disability, whether an individual was qualified for a job or eligible for a service, and whether a reasonable accommodation or modification was called for under the law." Joint Hoyer-Sensenbrenner Statement at 4; *see also* 2008 House Judiciary Report at 21 ("This change harmonizes the ADA with other civil rights laws by focusing on whether a person who has been discriminated against has proven that the discrimination was based on a personal characteristic (disability), not on whether he or she has proven that the characteristic exists.").

Section 1630.5 Limiting, Segregating and Classifying

This provision and the several provisions that follow describe various specific forms of discrimination that are included within the general prohibition of § 1630.4. The capabilities of qualified individuals must be determined on an individualized, case by case basis. Covered entities are also prohibited from segregating qualified employees into separate work areas or into separate lines of advancement on the basis of their disabilities.

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Section 1630.9: Not Making Reasonable Accommodation

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Section 1630.9(e)

The purpose of this provision is to incorporate the clarification made in the ADA Amendments Act of 2008 that an individual is not entitled to reasonable accommodation under the ADA if the individual is only covered under the "regarded as" prong of the definition of "individual with a disability." However, if the individual is covered under both the "regarded as" prong and one or both of the other two prongs of the definition of disability, the ordinary rules concerning the provision of reasonable accommodation apply.

Section 1630.10 Qualification Standards, Tests, and Other Selection Criteria

Section 1630.10(a)—In General

The purpose of this provision is to ensure that individuals with disabilities are not excluded from job opportunities unless they are actually unable to do the job. It is to ensure that there is a fit between job criteria and an applicant's (or employee's) actual ability to do the job. Accordingly, job criteria that even unintentionally screen out, or tend to screen out, an individual with a disability or a class of individuals with disabilities because of their disability may not be used unless the employer demonstrates that those criteria, as used by the employer, are job related for the position to which they are being applied and are consistent with business necessity. The concept of "business necessity" has the same meaning as the concept of "business necessity" under section 504 of the Rehabilitation Act of 1973.

Selection criteria that exclude, or tend to exclude, an individual with a disability or a class of individuals with disabilities because of their disability but do not concern an essential function of the job would not be consistent with business necessity.

The use of selection criteria that are related to an essential function of the job may be consistent with business necessity. However, selection criteria that are related to an essential function of the job may not be used to exclude an individual with a disability if that individual could satisfy the criteria with the provision of a reasonable accommodation. Experience under a similar provision of the regulations implementing section 504 of the Rehabilitation Act indicates that challenges to selection criteria are, in fact, often resolved by reasonable accommodation.

This provision is applicable to all types of selection criteria, including safety requirements, vision or hearing requirements, walking requirements, lifting requirements, and employment tests. *See* 1989 Senate Report at 37–39; House Labor Report at 70–72; House Judiciary Report at 42. As previously noted, however, it is not the intent of this part to second guess an employer's business judgment with regard to production standards. *See* § 1630.2(n) (Essential Functions). Consequently, production standards will generally not be subject to a challenge under this provision.

The Uniform Guidelines on Employee Selection Procedures (UGESP) 29 CFR part 1607 do not apply to the Rehabilitation Act and are similarly inapplicable to this part.

Section 1630.10(b)—Qualification Standards and Tests Related to Uncorrected Vision

This provision allows challenges to qualification standards based on uncorrected vision, even where the person excluded by a standard has fully corrected vision with ordinary eyeglasses or contact lenses. An individual challenging a covered entity's application of a qualification standard, test, or other criterion based on uncorrected vision need not be a person with a disability. In order to have standing to challenge such a standard, test, or criterion, however, a person must be adversely affected by such standard, test or criterion. The Commission also believes that such individuals will usually be covered under the "regarded as" prong of the definition of disability. Someone who wears eyeglasses or contact lenses to correct vision will still have an impairment, and a qualification standard that screens the individual out because of the impairment by requiring a certain level of uncorrected vision to perform a job will amount to an action prohibited by the ADA based on an impairment. (*See* § 1630.2(l); Appendix to § 1630.2(l).)

In either case, a covered entity may still defend a qualification standard requiring a certain level of uncorrected vision by showing that it is job related and consistent with business necessity. For example, an applicant or employee with uncorrected vision of 20/100 who wears glasses that fully correct his vision may challenge a police department's qualification standard that requires all officers to have uncorrected vision of no less than 20/40 in one eye and 20/100 in the other, and visual acuity of 20/20 in both eyes with correction. The department would then have to establish that the standard is job related and consistent with business necessity.

Section 1630.15 Defenses

* * * * *

Section 1630.15(f) Claims Based on Transitory and Minor Impairments Under the "Regarded As" Prong

It may be a defense to a charge of discrimination where coverage would be shown solely under the "regarded as" prong of the definition of disability that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment) both transitory and minor. Section 1630.15(f)(1) explains that an individual cannot be "regarded as having such an impairment" if the impairment is both transitory (defined by the ADAAA as lasting or expected to last less than six months) and minor. Section 1630.15(f)(2) explains that the determination of "transitory and minor" is made objectively. For example, an individual who is denied a promotion because he has a minor back injury would be "regarded as" an individual with a disability if the back impairment lasted or was expected to last more than six months. Although minor, the impairment is not transitory. Similarly, if an employer discriminates against an employee based on the employee's bipolar disorder (an impairment that is not transitory and minor), the employee is "regarded as" having a

disability even if the employer subjectively believes that the employee's disorder is transitory and minor.

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[FR Doc. 2011–6056 Filed 3–24–11; 8:45 am]

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